

(24,675)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 112.

JESSE L. HARNAGE AND THE DELOKEE GAS AND OIL
COMPANY, PLAINTIFFS IN ERROR,

vs.

ANNIE M. MARTIN AND ROTH, ARGUE & MAIRE
BROTHERS OIL COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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a In the Supreme Court of the United States.

Return to Writ.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and all proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, this 31st day of March, 1915.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma.

b In the Supreme Court of the State of Oklahoma.

No.—.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, Plaintiffs in Error,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

PETITION IN ERROR AND CASE-MADE.

Error from Washington County.

1 In the Supreme Court of the State of Oklahoma.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, Plaintiffs in Error,

vs.

ANNIE M. MARTIN and ROTH-ARGUE-MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

Filed Aug. 16, 1912. W. H. L. Campbell, Clerk.

Petition in Error.

The said Jesse L. Harnage and Delokee Gas & Oil Company, plaintiffs in error, complain of said defendants in error for that the said Annie M. Martin and Roth-Argue-Maire Brothers Oil Company, at the January term of the District Court of Washington County,

State of Oklahoma, recovered a judgment, by the consideration of said Court, against the said Jesse L. Harnage and Delokee Gas & Oil Company, in a certain action then pending in said Court, wherein the said Jesse L. Harnage and Delokee Gas & Oil Company were plaintiffs and the said Annie M. Martin and the Roth-Argue-Maire Brothers Oil Company were defendants. The original case made, duly certified and attested is hereunto attached, marked Exhibit "A" and made a part of this Petition in Error; and the said plaintiffs in Error aver that there is error in the said record and proceedings in this, to-wit:

First.

Said Court erred in overruling the Motion of Plaintiffs in Error for a new trial.

Second.

Said Court erred in sustaining the demurrer of the defendants to the evidence introduced by the plaintiffs.

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Third.

The Court erred in dismissing plaintiff's petition.

Fourth.

The Court erred in rendering judgment for the defendants and against the plaintiffs.

Wherefore, the plaintiffs in error pray that said judgment as rendered may be reversed in favor of the plaintiffs in error, and that the plaintiffs in error be restored to all rights which they have lost by the rendition of such judgment, and that they have such other relief as to the Court may seem just.

(Signed)

JESSE L. HARNAGE.

DELOKEE GAS & OIL COMPANY,

Plaintiffs in Error.

By VEASEY, O'MEARA & OWEN,

Attorneys for Plaintiffs in Error.

3

"EXHIBIT A."

4

STATE OF OKLAHOMA,
Washington County, ss:

In the District Court in and for said County and State.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, Plain-
tiffs,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
COMPANY, a Corporation, Defendants.

Filed Aug. 16, 1912. W. H. L. Campbell, Clerk.

Be it remembered, That heretofore, to-wit, on the 26th day of September, 1910, said plaintiff, Jesse L. Harnage, commenced his action against said defendants by filing in said court his petition; and afterwards, to-wit, September 27th, 1910, and before the defendants pleaded to said petition, the plaintiff filed his amended petition herein, which is in words and figures following to-wit:

5

STATE OF OKLAHOMA,
County of Washington, ss:

In the District Court.

No. 1251.

JESSE L. HARNAGE, Plaintiff,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
COMPANY, a Corporation, Defendants.

Amended Bill of Complaint.

Jesse L. Harnage, residing in the City of Tulsa, in Tulsa County of the State of Oklahoma, brings this his amended bill of complaint against Annie M. Martin, a resident of the City of Bartlesville, County of Washington and State of Oklahoma, and the Roth-Argue-Maire Brothers Oil Company, a corporation organized and existing under the laws of and domiciled within the State of Idaho, the United States of America, and thereupon your orator complains and says:

First.

Your orator states that he is a resident of the City of Tulsa, Tulsa County, State of Oklahoma; that at all times hereinafter mentioned

he was duly enrolled upon the records of the Commission to the Five Civilized Tribes, or upon the records of its successor, the Commissioner to the Five Civilized Tribes, as a citizen by blood of the Cherokee Indian Nation.

Second.

Your orator further states that the defendant, Annie M. Martin, is a resident of Bartlesville, Washington County, Oklahoma; that at all times hereinafter mentioned said defendant Annie M. Martin was duly enrolled upon the records of the Commission to the Five Civilized Tribes or upon the records of the Commissioner to the Five Civilized Tribes as a citizen by blood of the Cherokee Indian Nation.

Third. A.

Your orator further says that the defendant the Roth-Argue-Maire Brothers Oil Company is and was at certain times hereinafter referred to with respect to said company, a corporation duly organized and existing under the laws of the State of Idaho, and domiciled within said State of Idaho, and that the said corporation is duly authorized to carry on business within the State of Oklahoma as a foreign corporation, and has designated an agent in the City of Guthrie, Oklahoma, upon whom service may be had with respect to suits filed against said corporation in said State of Oklahoma.

Fourth.

Your orator says that the lands hereinafter described are a portion of the lands ceded to the Cherokee Indian Nation by the Treaty of New Echota, concluded between the United States and the said Cherokee Nation in 1835, and confirmed unto said Nation by treaties between the United States and said Nation, concluded in the City of Washington in 1846 and in 1866.

Fifth.

Your orator would show that said lands were a portion of the lands of the Cherokee Nation intended to be allotted to the citizens thereof under the terms of the Act of Congress approved July 1, 1902, and ratified by a majority vote of the whole number of votes cast by the legal voters of the Cherokee Nation, on the 7th day of August, 1902, which Act of Congress is commonly denominated and designated as the Cherokee Treaty.

Sixth.

Your orator would further show that Section 11 of said Treaty provides:

7 "There shall be allotted by the Commission to the Five Tribes and to each citizen of the Cherokee Tribe, as soon as

practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred and ten acres of the average allot-able lands of the Cherokee Nation * * * which land may be selected by each allottee so as to include his improvements."

Seventh.

Your orator would further show that the land hereinafter described is land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation.

Eighth.

Your orator avers that his enrollment as a citizen by blood of the Cherokee Indian Nation has been duly approved by the Secretary of the Interior, as was by said Act provided.

Ninth.

Your orator avers that the land which is the subject of this suit is situated in Washington County, State of Oklahoma, and is more particularly described as follows, to-wit:

Northeast Quarter of Southwest Quarter, less 3.08 acres K. O. C. & S. R. R. right of way, and Northwest Quarter of Southeast Quarter of Section Thirteen (13), Township Twenty-six (26) North, Range Twelve (12) East, containing 76.92 acres, more or less.

Tenth.

Your orator further avers that on or about the 1st day of July, 1893, all of the land above described, together with about one hundred and twenty (120) acres of land north thereof, was in an enclosure belonging to Johnstone and Keeler, who at said time, were claimants to citizenship in the Cherokee Indian Nation by intermarriage, and were generally recognized and dealt with, and exercised the rights of, Cherokee citizens by blood; that at the time in question, the lands above described, together with said one hundred and twenty acres north thereof, comprised a single farm or improvement, partly in cultivation, and with certain buildings thereon, and was known as the "Jacob Wheeler Farm."

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Eleventh.

Your orator avers that on said 1st day of July, 1893, one Wallace Thursday, also a claimant to citizenship in the Cherokee Indian Nation by intermarriage, and a person claiming all the rights of Cherokee citizenship, and a person at said time recognized as a citizen of said Cherokee Nation, purchased the so-called "Jacob Wheeler Farm," including all of the land described in this petition, for Mary Thursday, then the insane wife of said Wallace Thursday, and one Samuel Bob, then the minor step-grandchild of said Wallace Thursday, both

of which said parties last mentioned were duly enrolled citizens by blood of said Cherokee Indian Nation; that in payment therefor said Wallace Thursday gave to said Johnstone and Keeler the sum of Eight Hundred Dollars (\$800.00), which said payment was made out of the Delaware Indian payment moneys of said Mary Thursday and Samuel Bob, then in the possession of said Wallace Thursday, the greater portion of which said Eight Hundred Dollars (\$800.00) being the moneys of said Samuel Bob; that said purchase of said improvement or farm was evidence by the execution and delivery by said Johnstone and Keeler of a certain written bill of sale, a copy of which is attached hereto, made a part hereof, and marked "Complainant's Exhibit A."

Twelfth.

And your orator says that immediately thereupon, to-wit, upon said 1st day of July, 1893, said Wallace Thursday took possession of said so-called "Jacob Wheeler Farm," including all of the land described in this bill of complaint, as and for the agent and representative of said Mary Thursday and said Samuel Bob, and continued in the sole exclusive possession thereof as such agent and representative up to and including the 13th day of May, 1904.

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Thirteenth.

And your orator says that during all of said period from and including said 1st day of July, 1893, up to and including said 13th day of May, 1904, said Mary Thursday was a person of unsound mind and of insufficient mental capacity to make a contract, and the said Samuel Bob was a minor, or a person under full age.

Fourteenth.

Your orator further says that at no time since said 1st day of July, 1903, up to and including said 13th day of May, 1904, was the defendant Annie M. Martin the owner of any of the improvements upon said so-called "Jacob Wheeler Farm," or including, as it did, the lands specifically described in this bill of complaint, nor at any time during said period was said Annie M. Martin in the possession of any part of said so-called "Jacob Wheeler Farm," including the lands described in this bill of complaint, nor has said defendant Annie M. Martin been in the lawful possession of any portion of the lands described in this bill of complaint at any time since said 13th day of May, 1904, up to and including the time of the filing of this bill of complaint.

Fifteenth.

Your orator avers that on or about the 5th day of May, 1904, said Wallace Thursday, then a claimant to citizenship in the Cherokee Nation by intermarriage, had selected as a portion of his allotment in said Cherokee Nation, the lands specifically described

in this bill of complaint, and said Wallace Thursday, as the legal guardian of said Samuel Bob, had selected as the allotment of said Samuel Bob in said Cherokee Nation the eighty-acre tract of land immediately north of the lands described in this bill of complaint, which said last-mentioned eighty-acre tract was also a part of said so-called "Jacob Wheeler Farm"; that on said 5th day of May, 1904, the claim to citizenship in said Cherokee Nation of said Wallace Thursday was a subject of doubt, and at the same time said Wallace Thursday as the legal guardian of said Samuel Bob, and said Samuel Bob himself, then a minor, anticipated the institution of a contest proceeding against said Samuel Bob with respect to the lands selected in allotment for said Samuel Bob, as already described herein.

Sixteenth.

Your orator states that as a result of this circumstance your orator entered into a certain agreement with said Wallace Thursday on his own behalf and as a legal guardian of said Samuel Bob, under the terms of which said parties last mentioned agreed to permit your orator to select the lands particularly described in this bill of complaint, as a portion of his allotment in the Cherokee Indian Nation, upon the condition that said selection would be subject to the prior claims of said Wallace Thursday and said Samuel Bob to said lands as their respective allotments in said Cherokee Nation; that is to say, said agreement contemplated your orator retaining as his allotment in said Cherokee Nation the lands particularly described in this bill of complaint, in the event that said Wallace Thursday should fail to establish his citizenship in said Cherokee Nation and in the further event that said Samuel Bob should not be deprived of the allotment selected for him north of the lands described herein by said anticipated contest proceedings.

Seventeenth.

Your orator avers that said Wallace Thursday has failed to establish his citizenship in said Cherokee Nation and that said Samuel Bob has succeeded in said contest proceedings with respect to the eighty-acre tract of land north of the eighty-acre tract specifically described in this bill of complaint, thereby eliminating and setting aside the conditions under which your orator was to select said land as his allotment in the Cherokee Nation and vesting in your orator the sole, absolute and indefeasible right to select as his allotment in said Cherokee Nation the lands specifically described in this bill of complaint.

Eighteenth.

Your orator further avers that in conformity with said agreement and on or about the said 5th day of May, 1904, Wallace Thursday transferred and set over the possession and all right, title and interest in and to the improvements on said land to your orator and your

orator immediately entered upon said lands specifically described in this bill of complaint and entered into possession thereof, the same being a portion of said so-called "Jacob Wheeler Farm," and completely inclosed said land with a row of fence-posts.

Nineteenth.

Your orator states that on the 13th day of May, 1904, complainant appeared before the Commissioner to the Five Civilized Tribes at the Cherokee Land Office, then located at Tahlequah, Indian Territory, and applied to have set aside as a portion of his allotment in said Cherokee Nation the lands specifically described in this bill of complaint, which said lands were less in value than one hundred and ten acres of the average allottable lands of the Cherokee Indian Nation; that accordingly, on said 13th day of May, 1904, said tract of land was by said Commission to said Five Civilized Tribes duly set apart, segregated and designated upon the records of the said Commission as a portion of the allotment of complainant in said Cherokee Nation.

Twentieth.

Your orator further avers that the selection of said land as the allotment of complainant was prior in point of time to the application of the defendant, Annie M. Martin, and that at the time
12 of said application of complainant, the said Annie M. Martin was not in the possession of any portion of the lands specifically in this bill of complaint, nor was the said Annie M. Martin the owner of any of the improvements thereon, and that at said time your orator had no notice, either actual or constructive, of any alleged claim of any kind or character, either in law or equity, of said defendant Annie M. Martin to said lands specifically described in this bill of complaint.

Twenty-first.

Your orator avers that on or about the 26th day of May, 1904, and subsequent to the selection of said land in allotment by your orator, said Annie M. Martin appeared before said Commissioner to said Five Civilized Tribes and applied to have the lands specifically described herein set apart to her as a portion of her allotment in said Cherokee Nation, which said request was by said Commission refused; that immediately thereupon, to-wit, on said 26th day of May, 1904, said Annie M. Martin instituted contest proceedings before said Commission to the Five Civilized Tribes, against your orator, asserting a right to select said land as her allotment in said Cherokee Nation and praying that she, the said Annie M. Martin, be permitted to take in allotment the tract of land herein specifically described; that a copy of the complaint of said Annie M. Martin filed in said proceeding and containing the basis of the claim of said Annie M. Martin to the lands described herein, is attached hereto, made part hereof, and marked "Complainant's Exhibit B."

Twenty-second.

Your orator avers that the following provision was a part of the Act of Congress approved April 21, 1904, to-wit:

"That the Delaware-Cherokee citizens who have made improvements, or are in rightful possession of such improvements, in the Cherokee Nation at the time of the passage of this act shall have the right to first select from said improved lands their allotments, and thereafter, for a period of six months, shall have the right to sell the improvements upon their surplus holdings of lands to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose."

Twenty-third.

Your orator would further aver that the Act of Congress approved March 3, 1905, contained the following provisions, 33 Stat. 1071:

"That Delaware-Cherokee citizens who have made improvements or were in rightful possession of such improvements upon lands in the Cherokee Nation on April twenty-first, nineteen hundred and ten to which there is no valid adverse claim, shall have the right within six months from the date of the approval of this Act to dispose of such improvements to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be designated by the President for that purpose * * *

Twenty-fourth.

Your orator further avers that said Mary Thursday and said Samuel Bob were of that class of Cherokee citizens designated — Commission to the Five Civilized Tribes as Delaware-Cherokee citizens; that on about the — day of —, said Mary Thursday and said Samuel Bob had selected their respective allotments in said Cherokee Nation and that the improvements upon the lands described in this bill of complaint were their so-called excess or surplus improvements, the same being improvements upon the lands in excess of the allotment portion of said Mary Thursday and said Samuel Bob, already selected by them as aforesaid, and that there was no valid adverse claim against said Mary Thursday and said Samuel Bob with respect to said improvements.

Twenty-fifth.

That on the — day of —, 1905, your orator avers, said Wallace Thursday as the legal guardian of said Mary Thursday, then a person of unsound mind, and said Samuel Bob, then a minor, filed his certain petition with the Commission to the Five Civilized Tribes, praying that a day be set upon which said petitioner and all other parties in interest should appear and a hearing be had to determine as to whether or not the lands specifically de-

scribed in this bill of complaint were a portion of the excess or surplus improvements of said Mary Thursday and said Samuel Bob as Delaware-Cherokee citizens, and that in the event that it be found upon said hearing that said improvements were the property of said Mary Thursday and said Samuel Bob, and that the same were their surplus or excess improvements in said Cherokee Nation, the same be duly certified as such surplus or excess improvements to the proper official of the Interior Department, as required by the rules and regulations prescribed by the Secretary of the Interior to carry into effect the provisions of the Act of Congress approved March 3, 1905, relative to the sale of surplus or excess improvements upon lands belonging to said Delaware-Cherokee citizens, and in order that said Mary Thursday and said Samuel Bob might have the privilege of selling said surplus or excess improvements under the provisions of said Act; a copy of said petition being attached hereto, made part hereof and marked "Complainant's Exhibit C."

Twenty-sixth.

That said Commissioner to said Five Civilized Tribes unlawfully, arbitrarily and in a manner constituting fraud with respect to the rights of said Mary Thursday and said Samuel Bob, and with respect to the rights of your orator, as will hereafter appear herein, wholly refused and failed to permit said hearing to be had and wholly failed and refused to certify the lands herein specifically described as the surplus or excess improvements of said Mary Thursday and said Samuel Bob to the proper official of the Interior Department, thereby unlawfully depriving said Mary Thursday and said Samuel Bob of the rights conferred upon them as Delaware-Cherokee citizens to sell their said excess or surplus improvements at a price to be

15 fixed by an official designated by the Secretary of the Interior as was provided in said Act of Congress approved the 3rd day of March, 1905, and thereby depriving said Mary Thursday and said Samuel Bob, and, as will hereafter appear herein, your orator of the benefits and privileges of said Act of Congress.

Twenty-seventh.

And your orator avers that on the 21st day of June, 1905, and upon the verified petition of said Wallace Thursday as the legal guardian of said Mary Thursday, the United States Court for the Northern Judicial District of the Indian Territory, sitting at Nowata, Indian Territory, in probate, rendered its certain order, under the terms of which said Wallace Thursday as the guardian of person and estate of said Mary Thursday, was authorized and empowered to sell to your orator the undivided one-half interest which said Mary Thursday owned in and to the improvements upon the lands specifically described herein, said order further providing that said sale should be made in conformity with the Act of Congress affecting the sale of such excess or surplus improvements by said Cherokee-Delaware citizens and at the price fixed by the official appointed by the Presi-

dent for the purpose of fixing the prices of said improvements; a copy of which order is attached hereto, made a part hereof and marked "Complainant's Exhibit D."

Twenty-eighth.

Your orator alleges that on the same day, to-wit, on the 21st day of June, 1905, said United States Court rendered its further order designating said Wallace Thursday as the legal guardian of the person and estate of Samuel Bob, to sell to your orator the undivided one-half interest of said Samuel Bob in and to the improvements upon the lands specifically described in this bill of complaint, 16 said order further providing that said sale should be made at a price to be fixed by the official designated by the President for that purpose to carry into effect said provisions of the Act of Congress approved the 3rd day of March, 1905; a copy of which order is attached hereto, made a part hereof and marked "Complainant's Exhibit E."

Twenty-ninth.

Your orator further alleges that the unlawful failure and refusal of said Commissioner to the Five Civilized Tribes to set for hearing the matter of determining whether or not said improvements upon the lands herein specifically described were the surplus or excess improvements of said Mary Thursday and said Samuel Bob, and the unlawful failure and refusal of said Commissioner to certify to said proper official that said lands were such excess or surplus improvements of said Mary Thursday and said Samuel Bob, deprived your orator and said Mary Thursday and said Samuel Bob of their rights accruing under the terms of said order of Court hereinbefore referred to.

Thirtieth.

Your orator further avers that at the time of your orator's selection of the land mentioned in this petition as his allotment, to-wit, on the 13th day of May, 1904, he agreed with said Wallace Thursday for a good valuable consideration that he, the said Wallace Thursday, should remain in possession of the lands described in this complaint as the tenant of your orator, and on the 10th day of June, 1905, your orator and the said Wallace Thursday entered into their certain lease in writing with respect to the land specifically described herein, under the terms of which said lands were rented to said Wallace Thursday for the term of five years from said 10th day of June, 1905; a copy of which lease is attached hereto, made a part hereof and marked "Complainant's Exhibit F."

17

Thirty-first.

Your orator avers that the contest case so instituted by the defendant Annie M. Martin, against your orator, as aforesaid, involving the right to select in allotment the lands herein specifically

described, was set for trial before the Commissioner to the Five Civilized Tribes at Muskogee, Indian Territory, on the 25th day of September, 1907.

Thirty-second.

Your orator avers that on said 25th day of September, 1907, your orator and said Annie M. Martin, one of the defendants herein, appeared before said Commissioner to said Five Civilized Tribes at Muskogee, Indian Territory, with counsel and with their witnesses, and said parties introduced certain evidence in support of their respective contentions with respect to the right to allot the lands herein specifically described, which evidence as at said time reported by the official stenographer of said Commissioner to the Five Civilized Tribes, and afterwards fully and completely transcribed, a copy of which evidence taken at said time is attached hereto, made a part hereof and marked "Complainant's Exhibit G."

Thirty-third.

That among other things introduced in evidence at said hearing, as your orator avers, was all of the testimony and evidence taken by said Commission to said Five Civilized Tribes, or said Commissioner to said Five Civilized Tribes, in Cherokee Allotment Contest case of Heady vs. Bob, including the investigation of the Department of the Interior therein, which said record was introduced by consent of parties; a copy of which is attached hereto, made part hereof and marked "Complainant's Exhibit H," "Complainant's Exhibit I," and "Complainant's Exhibit J."

18

Thirty-fourth.

And your orator further avers that on the 2nd day of January, 1908, the Commissioner to the Five Civilized Tribes rendered his decision in said Cherokee Allotment Contest Case wherein your orator was party contestee and defendant Annie M. Martin was party contestant, involving the lands specifically described in this bill of complaint, under which decision said lands were awarded to the defendant Annie M. Martin; that your orator appealed from said decision to the Commissioner of Indian Affairs who, on the 25th day of May, 1908, rendered his decision in said contest case affirming the decision of said Commissioner to the Five Civilized Tribes, both of which decisions are attached hereto, made a part hereof and marked "Complainant's Exhibit K" and "Complainant's Exhibit L."

Thirty-fifth.

Your orator avers that within the time prescribed by the regulations of the Secretary of the Interior with respect to the appeal from decisions rendered in said land contest cases, your orator appealed from said decision of said Commissioner of Indian Affairs awarding said land to the defendant Annie M. Martin, and in said

Motion for Appeal, prayed that said Secretary of the Interior in his said decision make specific findings of fact and conclusions of law with respect to definite propositions of fact and of law material to the issue in said contest case and set out in said motion for appeal; a copy of which motion containing said request for said definite findings of fact and conclusions of law is attached hereto, made a part hereof and marked "Complainant's Exhibit M."

Thirty-sixth.

Your orator further avers that on the 10th day of October, 1908, the Secretary of the Interior rendered his decision in said Cherokee

19 Allotment Contest case numbered 926, as the same was designated upon the records of the Commissioner to the Five Civilized Tribes, wherein defendant Annie M. Martin was contestant and your orator was contestee, involving the lands sued on herein, by which decision said land was awarded to the defendant Annie M. Martin; a copy of which decision is attached hereto, made part hereof, and marked "Complainant's Exhibit N."

Thirty-seventh.

Your orator avers that subsequent to the rendering of said decision by the Secretary of the Interior, and within the period prescribed by the regulations of said Secretary, complainant filed his motion for a review of said decision, a copy of which motion is attached hereto, made a part hereof and marked "Complainant's Exhibit O," which said motion was by said Secretary on the — day of —, denied, a copy of which said decision denying said motion is attached hereto, made a part hereof and marked "Complainant's Exhibit P."

Thirty-eighth.

Your orator avers that in the consideration of the appeal in said cause, and in the consideration of the motion for review hereinbefore referred to, and in the rendering of his decision in said allotment contest case, the Secretary of the Interior wholly ignored the prayer of this complainant for specific findings of fact and conclusions of law on questions of fact material to the issue in said contest case.

Thirty-ninth.

Your orator further avers that immediately subsequent to the decision of said Secretary upon said motion for review as aforesaid certificates of allotment covering the lands specifically described in this bill of complaint were issued to the defendant Annie M. Martin by the Commissioner to the Five Civilized Tribes, acting under the direction of said Secretary of the Interior.

Fortieth.

Your orator avers that the decision of said Secretary of the Interior upon said contest case, and his decision upon the motion for review

as aforesaid, and the issuing of said certificates of allotment to the defendant Annie M. Martin, wholly deprived this complainant of any further remedy before the Department of the Interior or any agency thereof.

Forty-first.

Your orator avers that said decision of said Secretary of the Interior awarding said land to the defendant Annie M. Martin was erroneous, in that it is disclosed by said decision that said Secretary fell into a gross misapprehension as to what the material facts in said cause as shown by the records before him were; and that said Secretary, in the decision of said cause, applied principles of law which had no bearing upon the facts found, conceded or established by said record, or failed to apply in the decision of cause awarding said land to the defendant Annie M. Martin, principles of law which were applicable to and controlling with respect to the material facts found, conceded or established by said record.

Forty-second.

Your orator avers that one of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not in 1893 the land specifically described herein, together with about one hundred and twenty (120) acres of land contiguous thereto, was purchased for Mary Thursday, then a person of unsound mind, and Samuel Bob, then a minor, by Wallace Thursday, the husband of Mary Thursday and step-grandfather of Samuel Bob, with Eight Hundred Dollars (\$800.00) of the Delaware payment moneys of Mary

21 Thursday and Samuel Bob, the greater part of which purchase money was paid out of the estate of Samuel Bob; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Forty-third.

Your orator avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not from the date of said purchase until at least the selection of a portion of the so-called "Jacob Wheeler Farm," in allotment by Samuel Bob, said entire "Jacob Wheeler Farm," embracing the lands specifically described in this bill of complaint, remained the joint property of said Mary Thursday and said Samuel Bob; that the Secretary of the

Interior made no finding upon said issue of fact and that in failing so to do committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Forty-fourth.

22 Your orator avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not complainant made the first formal selection of said land as a portion of his allotment in the Cherokee Indian Nation, and that the selection of the defendant Annie M. Martin was subsequent in point to the selection of this complainant; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Forty-fifth.

Your orator avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not, in 1899, at the time of the alleged gift of the improvement upon the lands described in this bill of complaint, by Mary Thursday to the defendant Annie M. Martin, said Mary Thursday was mentally incompetent to make a contract regarding her property; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless and insufficient examination of said cause or to an unwarranted bias or prejudice, against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

23

Forty-sixth.

Your orator avers that another of the material issues of fact in said cause, as shown by the record before the Secretary of the In-

terior for consideration, was whether or not in 1899, Samuel Bob, the joint owner with Mary Thursday of the improvement upon the land in controversy herein, at said time was a person under full age and therefore incompetent in the eyes of the law, to make a contract respecting his property; that the Secretary of the Interior made no finding upon said issue of fact, and that failing so to do committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Forty-seventh.

Your orator further avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not at the time of said alleged gift in 1899, upon which the defendant Annie M. Martin relied for her title herein, was approved by the proper court having jurisdiction of the estates of said Mary Thursday, a person of unsound mind, and said Samuel Bob, a minor; that the Secretary of the Interior made no finding upon said issue of fact, and that in failing so to do committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause or to an unwarranted bias or prejudice against your orator, or to
 24 a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Forty-eighth.

Your orator avers that another material issue of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not the defendant Annie M. Martin had ever been in lawful possession of the lands described in this bill of complaint, either in her own person or through Mary Thursday, or whether any other acts occurred with respect to lands evidencing a delivery of the possession thereof from said Mary Thursday to the defendant Annie M. Martin; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of this cause which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, in this action, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved

before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Forty-ninth.

Your orator avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not Samuel Bob had transferred his alleged interest in the lands specifically described in this bill of complaint, to the defendant Annie M. Martin; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and
25 controlling mistake in the determination of said cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fiftieth.

And your orator further avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not Mary Thursday and Samuel Bob were Delaware-Cherokee citizens of the Cherokee Nation and were duly enrolled as such during the time said citizens had the right under the regulations of the Secretary of the Interior to dispose of their excess improvements upon lands in the Cherokee Nation as such Delaware-Cherokee citizens; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fifty-first.

Your orator avers that another of the material issues of fact in said cause, as shown by the record thereof before the Secretary of the Interior for consideration, was whether or not said Mary Thursday and said Samuel Bob made an attempt to comply with
26 the regulations of the Department of the Interior with respect to the sale of their surplus improvements as Delaware-Cherokee citizens of the Cherokee Nation and whether or not they were deprived of rights in regard thereto as such Delaware-Cherokee citizens by the arbitrary and unwarranted action of the Commis-

sioner to the Five Civilized Tribes; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against the complainant in this action, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fifty-second.

Your orator avers that another of the material issues of fact in said cause, as shown by the record thereof before said Secretary of the Interior for consideration, was whether or not, at the time of the selection of said land by this complainant as a portion of his allotment, to-wit, on the 13th day of May, 1904, he was in possession of and the owner of valuable improvements upon the lands involved in this controversy; that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

27

Fifty-third.

Your orator avers that said Secretary of the Interior, in said decision, found, or pretended to find, from the record in said contest case before him for consideration as aforesaid, that in 1899 said Mary Thursday gave the improvements upon the land in controversy to the defendant Annie M. Martin, and that there is no evidence in said record which was before said Secretary of the Interior which supports or tends to support said finding of fact herein referred to; that the Secretary of the Interior, in making said finding of fact, committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fifty-fourth.

Your orator avers that said Secretary, in said decision, found, or pretended to find, from the record of said contest case before him

for consideration as aforesaid, that complainant had knowledge of the claim or the pretended claim of the defendant Annie M. Martin to the improvements upon the lands in controversy herein, and that there is no evidence in said record proving or tending to prove said fact so found by said Secretary, as is herein specifically described; that the Secretary of the Interior, in making said finding of fact, committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fifty-fifth.

Your orator avers that said Secretary of the Interior, in said decision, found, or pretended to find, from the record of said contest case before him for consideration as aforesaid, that subsequent to the year 1899, and prior to the selection of said land by complainant, to-wit, May 13, 1904, the defendant Annie M. Martin, either in her own person or through Mary Thursday, was in the possession of the lands in controversy herein, but your orator avers that there is no evidence in said record providing, or tending to provide, said fact so found or pretended to be found, by said Secretary as aforesaid; that the Secretary of the Interior, in making said finding of fact, committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fifty-sixth.

Your orator further avers that said Secretary of the Interior, in said decision, found, or pretended to find, from the record of said contest case before him for consideration as aforesaid, that
 29 the father of said defendant Annie M. Martin, to-wit, Bill Bob, acquired some interest in the possessory right to the improvements on said land in controversy, which descended to the defendant Annie M. Martin upon his death, but your orator avers that there is no evidence in the record proving, or tending to prove, the fact thus found, or pretended to be found, by said Secretary of the Interior as aforesaid; that the said Secretary, in making said finding of fact, committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, or to a gross mis-

take of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts proved before him, which had a like effect as a mistake of law, and by reason of which the allotment certificate issued to defendant Annie M. Martin.

Fifty-seventh.

Your orator avers that said Secretary of the Interior, in said decision, found, or pretended to find, from the record of said contest case before him for consideration as aforesaid, that the defendant Annie M. Martin had such possession or control over the improvements upon the land in controversy, prior to the selection thereof by complainant, as would be notice to the world of her right or claim to said improvements, but your orator avers that there was no evidence in said record proving, or tending to prove said fact so found by said Secretary; that said Secretary, in making said finding of fact, committed a grave and controlling mistake in the determination of this cause, which mistake was due either to a careless or insufficient examination of said cause, or to an unwarranted bias or prejudice against your orator, which had like effect as a mistake of law, and by reason of which the allotment certificate issued

30 to defendant Annie M. Martin.

Fifty-eight.

That another material issue of fact in said cause was whether or not Mary Thursday and Samuel Bob who were Delaware-Cherokee citizens of the Cherokee Nation and were duly enrolled as such during the time said citizens had the right under the regulations of the Secretary of the Interior to dispose of their excess improvements upon lands in the Cherokee Nation as such Delaware-Cherokee citizens; that the Secretary of the Interior made no finding, upon said issue of fact and that in failing to do so he committed a gross and controlling mistake in the determination of this cause, which mistake was due to a gross mistake by reason of which the Secretary of the Interior fell into a gross misapprehension of the facts in the record, or to the careless and insufficient examination of the record, or to an unwarranted bias and prejudice against this plaintiff, which had a like effect as mistake of law, and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Fifty-nine.

That another material issue in said cause was whether or not said Mary Thursday and said Samuel Bob made any attempt to comply with the regulations of the Department of the Interior with respect to the sale of their surplus improvements as Delaware-Cherokee citizens of the Cherokee Nation and whether or not they were deprived of their right in regard thereto as such Delaware-Cherokee citizens by the arbitrary and unwarranted action of the Commissioner to the Five Civilized Tribes that the Secretary of the Interior

made no findings upon said issue and that in failing so to do he committed a gross and controlling mistake in the determination of this cause which was due to a gross mistake of the Secretary of the

Interior, by reason of which he fell into a gross misapprehension of the record, or to a careless and insufficient examination of the record, or to a *careless and insufficient examination of the record* or to an unwarranted bias and prejudice against this plaintiff, which had a like effect as a mistake of law, and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty.

That the Secretary of the Interior made a gross and controlling mistake when he failed, neglected and refused to find from the testimony of both the contestant and contestee found in the records in the contest case tried before the Department, that the plaintiff, Jesse L. Harnage, was the owner of and in lawful and peaceful possession of the improvements on the land in controversy at the time he applied to select the same as his part in the allottable lands of the Cherokee Nation of Indians, that this was due to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant, Annie M. Martin.

Sixty-one.

That the Secretary of the Interior made a gross and controlling mistake when he failed, neglected and refused to find that as between the plaintiff, Jesse L. Harnage and the defendant Annie M. Martin the land in controversy was public domain, and that the plaintiff was the first to apply for the same, which was due to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a
 32 careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

And further complaining your orator says, that the Secretary of the Interior made a gross and controlling mistake of fact when he found from record in the contest case tried before the Department; that the defendant Annie M. Martin became a member of the Thursday household in early childhood and that Mary Thursday stood in the place of loco parentis, that this mistake was due to a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to the fact that misrepresentations and fraud have been practiced necessarily affecting the

judgment of the Secretary of the Interior, or to an unwarranted bias and prejudice against this plaintiff, which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-two.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department, that the defendant Annie M. Martin made her home upon the original Thursday place and that this was a material fact, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside of the record, which was a fraud upon the rights of this plaintiff, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-three.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department, that Annie M. Martin was ever at any time removed from the home of the Thursday family or brought by force to the home of the said Frank Frenchman after April 1901, and that this was due either to the arbitrary action of the Secretary of the Interior in going outside of the record, which was a fraud upon the rights of this plaintiff, or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-four.

That the Secretary of the Interior made a gross and controlling mistake of fact when he found from the record in said contest case tried before the Department, that Mary Thursday used various sums of money belonging to the defendant in the establishment of the Thursday home, and that this was a material fact in said contest case; that this was due to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a

mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-five.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department, that Mary Thursday and Wallace Thursday ever at any time informed the defendant that she had an interest in the Thursday holdings, and was entitled to a share therein, and that this was a material fact in deciding the contest case before the Department, and that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the records, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-six.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the plaintiff had any knowledge whatever of the defendant's claim or claims of this defendant to the improvements on the land in controversy, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the records which was a fraud upon the
35 rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-seven.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the defendant acquired any interest in the Thursday place including the land in controversy, either by money loaned or by labor, or otherwise, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason

of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-eight.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that Mary Thursday or Walla Thursday ever used any of the money of the defendant in improving the original Thursday place or in placing improvements on the land in controversy; that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which, he fell into a gross misapprehension of the facts in the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Sixty-nine.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the defendant was ever at any time in lawful possession of the improvements on the original Thursday place or on the land in controversy either in person or through another, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the defendant ever acquired any interest in the improvements on the original Thursday place or on the land in controversy, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-one.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the father of the defendant, Wild Bill or Bill Bob, ever acquired any interest in any of the improvements on the Thursday place, and that after the purchase of the Wheeler farm, that there was a recognized community of interest in the Thursday holdings so as to include this defendant; that this mistake was due to either the arbitrary action of the Secretary of the Interior in going outside the record which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to the fact that misapprehensions and fraud have been practiced necessarily affecting the judgment of the Secretary of the Interior or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-two.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the father of the defendant,
38 Bill Bob, ever acquired any possessory right or interest in any of the improvements on any of the Thursday holdings, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-three.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that Mary Thursday ever received payments from the defendant for any purpose whatever, that this mistake was due to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the records or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of

which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-four.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department, that Wallace Thursday was not in lawful possession of the improvements on the land in controversy
39 and that he did not have the right to transfer the same to this plaintiff, that this mistake was due to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the record or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-five.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest tried before the Department that the plaintiff Jesse L. Harnage, did not enter into lawful and peaceful possession of said improvements and that he did not acquire any interest in the same by lawful contract based upon a good and adequate consideration, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior, by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-six.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department, that the defendant ever at any
40 time had control or authority directly or indirectly over the improvements of the land in controversy prior to the time of her application for it which would be notice to the world of her rights in or claims to said improvements, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to an

unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

Seventy-seven.

That the Secretary of the Interior made a gross and controlling mistake of fact, when he found from the record in the contest case tried before the Department that the plaintiff J. L. Harnage, at the time he purchased the claim of Wallace Thursday, to the improvement on the land in controversy was not a bona fide purchaser and without notice for a good and valuable consideration, and that when he was put into possession of said improvements by Wallace Thursday, he acquired a good title to said improvements against all the world, that this mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record, which was a fraud upon the rights of this plaintiff or to a gross mistake of the Secretary of the Interior by reason of which he fell into a gross misapprehension of the facts in the record, or to a careless and insufficient examination of the record, or to an unwarranted bias and prejudice against this plaintiff which had a like effect as a mistake of law and by reason of which mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

41 And further complaining your orator says, that the Secretary of the Interior, in his decision in the above entitled contest case, fell into numerous gross errors of law and failed and neglected and refused to apply principles of law which were operative and controlling in the decision of said contest case, and committed many grave errors in the principles of law which were applicable and applied those which had no bearing whatever on the issues of this case—hereby unlawfully, arbitrarily and without any reason in fact or in law deprived this plaintiff of his title and title to the specific land mentioned in this complaint, and unlawfully awarded the land to this defendant, Annie M. Martin, and that among the gross errors of law made by the Secretary of the Interior are the following:

I.

That the Secretary of the Interior made a gross and controlling mistake of law when he failed, neglected and refused to conclude from the facts found, conceded and established that after Samuel Bob and Mary Thursday selected their allotments of land they had no salable or legal interest to the improvements on the land in controversy, until the passage of the Act of Congress providing for the sale of surplus Delaware improvements, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

II.

That the Secretary of the Interior made a gross and controlling mistake of law when he failed, neglected and refused to conclude

from the facts found, conceded and established at the hearing in the contest case before the Department, that under the treaty providing for the allotment of lands in the Cherokee Nation and under the laws of the Cherokee Nation that this plaintiff had a vested and
42 absolute right to have the land described in this petition set apart to him as his share of the allottable lands of the Cherokee Nation, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

III.

That the Secretary of the Interior made a gross and controlling mistake when he failed, neglected and refused to conclude from the facts found, conceded or established, that it was only after the Act of Congress providing for the sale of surplus Delaware improvements that Samuel Bob and Mary Thursday, had any salable interest in the said improvements, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

IV.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department, that there was a relinquishment by implication by Samuel Bob and Mary Thursday of their interest in the improvements on the land in controversy to the defendant Annie M. Martin, when they selected their allotments; and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

V.

That the Secretary of the Interior made a gross and controlling mistake when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department that the defendant, Annie M. Martin, was ever at any time in legal possession of the improvements on the Thursday place or on the land in controversy, and that by reason of this mistake of law so
43 made the allotment certificate has been issued to the defendant Annie M. Martin.

VI.

That the Secretary of the Interior made a gross and controlling mistake when he concluded from the facts found, conceded, or established at the hearing in the contest case before the Department, that Wallace Thursday, as a claimant for citizenship in the Cherokee Nation, was not in lawful and peaceful possession of the improvements on the Thursday place, including the land in controversy, and did not have the right to dispose of the same to a person entitled to allotment in the Cherokee Nation, and that by reason of this mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

VII.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that under the Cherokee law governing property rights in improvements, and under the various acts of Congress providing for the allotment of land in the Cherokee Nation, the plaintiff had not acquired a vested interest in the improvement by the contract with Wallace Thursday and entering into physical possession of the same before he selected the same as his allotment, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

VIII.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that Samuel Bob and Mary Thursday, as Delaware citizens of the Cherokee Indian Nation, did not have the right to dispose of
44 these improvements under the Acts of Congress providing for the sale of surplus Delaware Improvements, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

IX.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that there was ever anything in the acts of Annie M. Martin or Wallace Thursday, to pass any right, title or interest in the improvements on any of the Thursday holdings including the land in controversy to the defendant Annie M. Martin, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

X.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing of the contest case before the Department; that Section 11 of the Act of June 28, 1908 (30 Stat. 495), had any application or bearing upon the case prejudicial to the rights or claim of this plaintiff, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XI.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or

established at the hearing in the contest case before the Department; that in 1909, Mary Thursday gave the defendant, Annie M. Martin, the right to select the land in controversy as her allotment, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

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XII.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that Mary Thursday was capable of making a legal contract, or doing a legal act with reference to her interests or the interests of Samuel Bob in the improvements of the land in controversy, and that by reason of this mistake so made the allotment certificate has been issued to the defendant Annie M. Martin.

XIII.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that the exclusive jurisdiction over the allotment of the land referred by Section 24 of the Acts of Congress July 1902, gave the Secretary of the Interior the right to control the acts of a guardian appointed by the United States Court in the selection of the allotments and disposition of interests in improvements of land claimed by minor wards, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XIV.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that Wallace Thursday as an intermarried claimant for citizenship was not in lawful possession of the improvements on the land in controversy and that his claim was not superior to the claim of the defendant or any other person by reason of which said Wallace Thursday had the legal right to convey the improvements on said
46 land to this plaintiff, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XV.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that there ever existed at any time the relation of landlord and tenant between the defendant on the one hand and Mary Thursday and

Wallace Thursday or even the relation of principal and agent, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XVI.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case tried before the Department; that Annie M. Martin rather than Samuel Bob and Mary Thursday was entitled to the improvements on the land in controversy at that time, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XVII.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that under Section 11 of the Act of Congress June 28, 1908 (30 Stat. 495), the plaintiff being in peaceful and legal possession of the improvements of the land in controversy was not entitled to have the land awarded to him, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant

47 Annie M. Martin.

XVIII.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that Wallace Thursday as a claimant to citizenship did not have actual possession, with a claim of right to said improvement on the lands and had the right to dispose of the same, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XIX.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established at the hearing in the contest case before the Department; that Section 22 of the Act of Congress July 1, 1902 (32 Stat. 716) conferred any jurisdiction upon the Commissioner to the Civilized Tribes over the acts of guardians appointed by the United States Court of the Indian Territory, that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

XX.

That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or

established at the hearing in the contest case before the Department, that the defendant Annie M. Martin ever at any time had any right or title to the improvements on the land in controversy or was ever at any time in possession thereof, and that by reason of this mistake of law so made the allotment certificate has been issued to the defendant Annie M. Martin.

48 XXa. That the Secretary of the Interior made a gross and controlling mistake of law, when he concluded from the facts, found, conceded or established, that the holding of the improvements and the possessory right thereto in the Thursday holdings were communal, and that by reason of this mistake so made the allotment certificate was issued to the defendant Annie M. Martin.

XXb. The Secretary of the Interior made a gross and controlling mistake of law, when he concluded from the facts, found, conceded or established, that the defendant Annie M. Martin, was ever a member of the Thursday Family, under the Act of Congress, of June 28th, 1898, and the Cherokee Agreement, Act of Congress of July 2nd, 1902, governing the allotment of lands in the Cherokee Nation, and that by reason of this mistake so made the allotment certificate was issued to the defendant Annie M. Martin.

XXc. That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts, found, conceded or established, that as between this plaintiff and the defendant, the land in controversy, was public domain, and that by reason of this mistake so made the allotment certificate was issued to the defendant Annie M. Martin.

XXd. That the Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established, that this plaintiff by reason of his attempt to purchase the improvements as the Delaware surplus of Sam Bob and Mary Thursday, and the effort of Wallace Thursday, to make said sale as provided by law, and the act of officials of the Interior Department in preventing said sale, that this plaintiff was not entitled to select said land as his allotment, by reason of which mistake so made the allotment certificate was issued to the defendant Annie M. Martin.

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79.

Your orator avers that by reason of said decision of said Secretary of the Interior embodying, as it did, gross misapprehensions of the material facts in said cause and the application of principles of law which had no bearing thereon, and the failure to apply principles of law which were operative and controlling, certificates of allotment covering said land were issued to the defendant Annie M. Martin when, in fact and in law said certificates should have been issued to this complainant, thereby segregating and setting aside to this complainant the lands herein specifically described as a portion of his allotment in said Cherokee Nation.

80.

Your orator avers that by reason of the prior filing of this complainant upon the land in controversy herein, and by reason of his

being the owner of the improvements thereon and in possession thereof at the time of his said selection thereof, to-wit, May 13, 1904, complainant had a vested right in and to the lands herein described, and was entitled to have the same allotted to him as a portion of his allotment in the Cherokee Nation, but that said Secretary of the Interior, in said decision, and by reason of said gross misapprehension of facts and said failure to apply proper principles of law, unlawfully and erroneously awarded said lands to the defendant Annie M. Martin, thereby depriving the complainant, so far as the Department of the Interior is concerned, of any relief in the premises, and thereby compelling complainant to resort to this court as an Indian citizen who has been deprived of his allotment by the unwarranted and unlawful action of the Department of the Interior or of some official or agency thereof.

81.

50 Your orator avers, upon information and belief, that the defendant Annie M. Martin has leased the lands herein specifically described, or a portion thereof, to the defendant The Roth-Argue-Maire Brothers Oil Company, a corporation, for oil and gas mining purposes, and that the said The Roth-Argue-Maire Brothers Oil Company has entered upon said land and is drilling the same for oil and gas mining purposes and is producing oil therefrom.

82.

Your orator further avers that he is entitled to the allotment value of the lands in controversy in other lands of the Cherokee Nation of Indians, or to take in lieu thereof the value in money and that the defendant is entitled to an allotment of land or the allotment value thereof in money, and that in order to do equity between this plaintiff and the defendant Annie M. Martin, this plaintiff prays that he be given judgment for the land in controversy as herein prayed for, and that the defendant be subrogated to his rights and claims against the Cherokee Nation of Indians for an allotment of land or the allotment value thereof in money.

83.

Your orator avers that the defendant Annie M. Martin is wholly insolvent.

Wherefore, complainant prays for the following relief:

First. That said Annie M. Martin be restrained from selling, mortgaging or in anywise disposing of or encumbering the lands specifically described in this bill of complaint, until the final determination hereof.

Second. That a receiver be appointed herein to drill and operate said lands for oil and gas mining purposes, the money therefor to be advanced by your orator, and said receiver authorized and empowered to conduct said oil and gas mining operations on said land

51 as will protect the same, pay all the expenses connected with such development and hold the balance of money received by him under further order of this Court pending the final determination hereof.

Third. That a decree be rendered herein declaring that said Annie M. Martin holds the lands specifically described herein in trust for this complainant, and establishing a resulting trust in said land in favor of this complainant as against the defendant Annie M. Martin, and directing said Annie M. Martin to convey all of her right, title and interest in and to said land to this complainant, and if said Annie M. Martin refuses to do so, that a Commission be appointed by the Court for the purpose of making said conveyance, or that the decree rendered herein declaring said resulting trust stand as a conveyance of all right, title and interest of the defendant Annie M. Martin in and to said land, to this complainant.

Fourth. That your orator have all other relief in the premises to which in good equity and conscience he is entitled.

May it please Your Honors to grant to your orator writs of subpoena to be directed to said Annie M. Martin and said The Roth-Argue-Maire Brothers Oil Company and the United States of America, and commanding them, and each of them, at a certain time and under a certain penalty therein limited, personally to appear before Your Honorable Court and then and there full, true, direct, and perfect answer make all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against and on either of them in the premises, as shall seem meet and agreeable to equity. And your orator will ever pray.

VEASEY & ROWLAND,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Eastern Dist. of Okla., ss:

52 Jesse L. Harnage states on oath that he is the complainant in the foregoing bill of complaint; that he has read the same and the facts set forth therein are true, as he verily believes.

J. L. HARNAGE.

Subscribed and sworn to before me this 26th day of September, 1910.

[OFFICIAL SEAL.]

L. G. DISNEY, *Clerk,*
By H. E. BOUDINOT, *Deputy.*

My commission expires — —, —.

(Endorsed on back:) No. 1257. Jesse L. Harnage Plaintiff vs. Annie M. Martin, Roth-Argue-Maire Brothers Oil Company, The United States of America, Defendants. Amended Petition. District Court Washington County Oklahoma. Filed Sep. 27, 1910. John B. Churchill.

Ex. A.

CONTESTEE'S EXHIBIT "1."

BARTLESVILLE, IND. TER., July 25, 1893.

Know all men by these Presents, that for and in consideration of the sum of Eight Hundred Dollars, the receipt of which is hereby acknowledged, we hereby sell, convey and by these presents deliver to Mary Thursday and son Bob, the following described property, the title to which we guarantee and defend to-wit: All our right, title and interest in certain improvements on about ninety acres of land be the same more or less located at what is known as the Jacob Wheeler farm, situate about four miles South of Bartlesville, Cherokee Nation, Indian Territory, Cooweescoowee District.

(Signed)

JOHNSTONE AND KEELER.

HY. JENNINGS, *Witness.*

Filed Jan. 27, 1910. L. G. Disney, Clerk U. S. Circuit Court
Eastern Dist. Okla.

53

Ex. B.

MARTIN

vs.

HARNAGE.

Department of the Interior,
Commissioner to the Five Civilized Tribes.

Contest of Allotment.

Filed Jan. 27, 1910. L. G. Disney, Clerk U. S. Circuit Court,
Eastern Dist. Okla.

ANNIE M. MARTIN, Contestant,

vs.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestees.

Complaint.

The Contestant, Annie M. Martin, states that she is 24 years of age and a Citizen of the Cherokee Nation. That on the 26th day of May, 1904, she made application to the Commissioner to the Five Civilized Tribes at the Cherokee Land Office to take in allotment for herself the N. E./4 S. W./4 less 3.08 acres K. O. C. & S. R. R. right of way, N. W./4 S. E./4 of Section 13-26-12. And it appeared of record that on the 5th day of May, 1904, the said tract of land was selected by Wallace Thursday for himself and on May 13th 1904 by Jesse L. Harnage for himself.

The Contestant further states that her father, William Bob Anderson, deceased, a registered Delaware Citizen, during his life-time, made and improved with his means and labor the place now held and occupied by one Wallace Thursday, who is not a citizen of the Cherokee Nation, of which place the land in controversy is a part; that said William Bob Anderson made his home and lived nearly all his life on said place and intended to take his allotment there for himself and members of his family; that the contestant has

54 been the owner of the said land and improvements since the death of her said father; that all other members of the family of William Bob Anderson, including his mother, have received their allotments of land, and that in accordance with the desire and intention of her father, and other members of her family, she is and has been for many years last past, entitled to the possession of said land and to take the same in allotment.

Wherefore, Contestant prays that she be permitted to take in allotment the tract of land herein described.

Annie M. Martin, says that she believes the statements contained in the foregoing complaint are true.

(Signed)

ANNIE M. MARTIN.

Witness to mark:

Subscribed and sworn to before me this 26th day of May, 1904.

(Signed)

SAMUEL FOREMAN,

[SEAL.]

Notary Public.

Ex. C.

Department of the Interior,
Commissioner to the Five Civilized Tribes.

In the Matter of the Petition of WALLACE THURSDAY, Guardian of the Person and Estate of Samuel Bob, a Minor, and Mary Thursday, an Insane Person, to Have Designated as the Improved Surplus Holdings of said Samuel Bob and Mary Thursday Certain Lands in the Cherokee Nation.

Petition.

55 Comes now Wallace Thursday, the legal guardian of the person and estate of Samuel Bob, a minor, and Mary Thursday, a person of unsound mind, and respectfully represents unto the Commission as follows:

That said Mary Thursday and said Samuel Bob are duly enrolled Delaware-Cherokee citizens of the Cherokee Nation.

That Mary Thursday has been an insane person for nineteen years; that she was so adjudged by the United States Court for the Northern Judicial District of the Indian Territory, sitting at Nowata, on the 16th day of May, 1904; and that on the 13th day of

September, 1904, your petitioner was appointed the legal guardian of the person and estate of said insane person.

That on or about the 17th day of November, 1903, your petitioner was appointed the legal guardian of the person and estate of Samuel Bob, a minor.

That on or about the 25th day of July, 1893, said incompetent persons acquired the ownership of the improvements upon the following described land in the Cherokee Nation of the Indian Territory, to-wit:

N. E./4 of S. W./4, less 3.08 acres K. O. C. & S. R. R. right of way, and N. W./4 of S. E./4 of Section 13, Township 26 North, Range 12 East, containing 76.92 acres, more or less.

That said incompetent persons retained all title and ownership in and to said improvements on said land and were the owners and in the rightful possession thereof on the 21st day of April, 1904.

That no adverse claim, or claims, of any kind or character have arisen which would be of binding force against said incompetent persons.

Wherefore, Your petitioner prays that a day be set at which he shall appear before the Honorable Commission to the Five Civilized Tribes at Tahlequah, Indian Territory, at the land office
56 to make proof hereof, and that upon said hearing the improvements upon the above described land be adjudged and certified as the improved surplus holdings of the said Samuel Bob and Mary Thursday, in order that your petitioner may dispose of the same in the manner provided for in the Acts of Congress approved April 1st, 1904, and March 3rd, 1905, and the regulations of the Department of the Interior -hereunder.

(Signed)

his
WALLACE X THURSDAY.
mark.

UNITED STATES OF AMERICA,

Northern Judicial District, Indian Territory, ss:

On this 29th day of June, 1905, before me a Notary Public in and for the Territory and District aforesaid, duly commissioned, qualified and acting as such, personally appeared Wallace Thursday, to me well known as the person who signed the foregoing petition, and stated on oath that he is the petitioner in the above and foregoing petition; that the same has been read to him, and that it is true in substance and in fact, as he verily believes.

[SEAL.]

(Signed)

his
WALLACE X THURSDAY.
mark.

Subscribed and sworn to before me this 29th day of June, 1905.

(Signed)

MARGARET N. DICKINSON,

Notary Public.

My commission expires March 10, 1909.

Endorsement: Filed June 30, 1905. Department of the Interior, Commission to the Five Civilized Tribes, Cherokee Land Office. Filed June 30, 1905. Tams Bixby, Chairman.

57

Department of the Interior,
Commissioner to the Five Civilized Tribes.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of the petition to have designated as the improved surplus holdings of Sanuel Bob and Mary Thursday certain lands in the Cherokee Nation.

J. GEO. WRIGHT,
Commissioner to the Five Civilized Tribes.
By W. S. D. MOORE, *Clerk.*

January 27, 1910.

(Endorsed on back:) District Court Washington County, Oklahoma. Filed Sep. 27, 1910. John B. Churchill.

Ex. D.

CONTESTEE'S EXHIBIT F.

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

In the United States Court for the Northern Judicial District of the Indian Territory, Sitting at Nowata, at the April Term, 1905.

In the Matter of the Guardianship of SAM BOB, a minor, ss:

Order of Court.

58 Comes now Wallace Thursday, Guardian of the person and Estate of Sam Bob, a minor, and the matter of the petition of said Guardian, relative to the sale of certain improvements upon the surplus-Delaware holdings of said Sam Bob, coming on in its order to be heard, and the Court being fully advised in the premises from the report of the Master in Chancery herein and evidence adduced in support of said petition, finds that the same should be granted.

It is therefore ordered, adjudged and decreed by the Court that Wallace Thursday, Guardian of the person and Estate of Sam Bob, a minor, be, and he hereby is authorized and empowered to sell to Jess L. Harnage, of Tahlequah, Indian Territory, a Cherokee citizen entitled to receive the same, the undivided one-half interest which the said Sam Bob owns in and to the improvements erected

and standing upon the following described land in the Cherokee Nation, to-wit:

The Northeast quarter of the Southwest quarter less 3.08 acres K. O. C. & S. R. R. right of way, and the Northwest quarter of the South-east' quarter of Section 13, Township 26 North, Range 12 East, containing 76.92 acres; said improvements consisting of three quarters of a mile of wire fence of 3 strands of wire with posts 1 rod apart.

It is further ordered and adjudged by the Court that said sale shall be made by said Guardian to said Harnage at a sum fixed and determined by the person appointed by the President to appraise the improvements of Delaware-Cherokee citizens upon their surplus holdings and according to the further regulations of the Department of the Interior proper in such cases.

And it is further ordered, adjudged and decreed by the Court that the amount for which said undivided interest shall be sold shall be a lien upon the rents and profits of the above described
59 land until said amount is fully paid and liquidated.

Done at a regular term of the United States Court in the Indian Territory, for the Northern District, on the 21 day of June, 1905.

WILLIAM R. LAWRENCE,
Judge of the U. S. Court for the Northern Judicial District, I. T.

UNITED STATES OF AMERICA,
*Northern Judicial District,
Indian Territory, ss:*

I, Charles A. Davidson, Clerk of the United States Court in and for the Northern Judicial District, Indian Territory, do hereby certify that the above and foregoing is a true and complete copy of an order of the United States Court made in the above Cause at Nowata, I. T., on the 21st day of June, A. D. 1905, as the same appears on the records in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of said Court on this 21 day of June, 1905.

[SEAL.]

CHAS. A. DAVIDSON, *Clerk,*
By J. H. MOREHOUSE, *Deputy.*

Ex. E.

COMPLAINANT'S EXHIBIT E.

UNITED STATES OF AMERICA,
Northern Judicial District,
Indian Territory, ss:

In the United States Court for the Northern Judicial District of the Indian Territory, Sitting at Nowata, at the April Term, 1905.

60 In the Matter of the Guardianship of MARY THURSDAY, an Insane Person, ss:

Order of Court.

Comes now Wallace Thursday, Guardian of the person and Estate of Mary Thursday, an insane person, and the matter of the petition of said Guardian, relative to the sale of certain improvements upon the surplus Delaware holdings of said Mary Thursday, coming on in its order to be heard, and the Court being fully advised in the premises from the report of the Master in Chancery herein and the evidence adduced in support of said petition finds that the same should be granted.

It is therefore ordered, adjudged and decreed by the Court that Wallace Thursday, guardian of the Person and Estate of Mary Thursday, a person of unsound mind, be and he hereby is, authorized and empowered to sell to Jesse L. Harnage, of Tahlequah, Indian Territory, a Cherokee citizen entitled to receive the same, the undivided one-half interest which the said Mary Thursday owns in and to the improvements erected and standing upon the following described land in the Cherokee Nation, to-wit:

The North-east Quarter of the Southwest Quarter, less 3.08 acres K. O. C. & S. R. R. right of way, and the North-west Quarter of the South-east Quarter of Section 13, Township 26 North, Range 12 East, containing 76.92 acres, said improvements consisting of three-quarters mile of wire fence of three strands of wire, with posts 1 rod apart.

It is further ordered and adjudged by the Court that said sale shall be made by said guardian to said Harnage at a sum fixed and determined by the person appointed by the President to appraise the improvements of Delaware-Cherokee citizens upon their surplus

61 holdings and according to the further regulations of the Department of the Interior proper in such cases.

And it is further ordered, adjudged and decreed by the Court that the amount for which said undivided interest shall be sold shall be a lien upon the rents and profits of the above described land until said amount is fully paid and liquidated.

Done at a regular term of the United States Court in the Indian Territory, for the Northern District, on the 21st day of June, 1905.

(Signed)

WILLIAM R. LAWRENCE,
Judge of the U. S. Court for the Northern Judicial District, I. T.

UNITED STATES OF AMERICA,
*Northern Judicial District,
 Indian Territory, ss:*

I, Charles A. Davidson, Clerk of the United States Court, in and for the Northern Judicial District, Indian Territory, do hereby certify that the above and foregoing is a true and complete copy of an order of the United States Court, made in the above cause, at Nowata, I. T., on the 21st day of June, A. D. 1905, as the same appears on the records in my office.

In Testimony Whereof I have hereunto signed my name and affixed the seal of said Court on this 21 day of June, 1905.

[SEAL.]

CHAS. A. DAVIDSON, *Clerk,*

By J. H. MOREHOUSE, *Deputy.*

Ex F.

EXHIBIT F.

This agreement, made and entered into on this 10 day of June, 1905, by and between Jess L. Harnage, of Tahlequah, Indian Territory, party of the first part, and Wallace Thursday, of Bartlesville, Indian Territory, party of the second part, witnesseth:

That whereas, the party of the first part has taken in allotment the following described lands, to-wit:

The northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section 13, Township 26 North, Range 12 East; and,

Whereas, the party of the second part has been in possession of said lands, either in his own behalf, or as guardian for some years; and

Whereas, the citizenship of the party of the second part is not yet determined; and

Whereas, the party of the second part is desirous of securing to himself such interest in said land as may be possible at this time.

Now, therefore, for and in consideration of the premises and in consideration also of the sum of One Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, the party of the first part hereby rents and leases to the party of the second part for agricultural purposes, for a term of five years from the date hereof, the following described lands in the Cherokee Nation, together with all the improvements and appurtenances thereunto belonging:

The Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section Thirteen (13), Township Twenty Six (26) North, Range (12) East.

In witness whereof, the parties hereto have hereunto set their hands this 10 day of June, 1905.

(Signed)

J. L. HARNAGE.

Witness:-

63 UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

Be it remembered, that on this 10 day of June, 1905, personally appeared before me a Notary Public in and for the Territory and District aforesaid, duly commissioned, qualified and acting as such, Jess L. Harnage of Tahlequah, Indian Territory, to me well known as the person who signed the within and foregoing agreement, and acknowledged that he executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and notarial seal this 10 day of June, 1905.

(Signed) EVA MCGREGOR. [SEAL.]

My commission expires the 31 day of Aug. 1908.

Ex. G.

Complaints of 'Annie M. Martin and Samuel Bob, Cherokee Allotment Contest No. 926.

"MARTIN
vs.
HARNAGE."

Department of the Interior, Commissioner to the Five Civilized Tribes.

Contest of Allotment.

ANNIE M. MARTIN, Contestant,

vs.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestees.

64 SAMUEL BOB, by W. S. D. MOORE, His Next Friend, Intervener.

Complaint.

The Contestant Samuel Bob by W. S. D. Moore his next friend, states that Samuel Bob is 21 years of age and a Citizen of the Cherokee Nation. That on the 26 day of October 190- he made application to the Commissioner to the Five Civilized Tribes at the Cherokee Land Office to take in allotment for Samuel Bob the N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ less 3.08 acres for K. O. C. & S. R. R. right of way and N. W. S. E. of Sec. 3 T. 26 N. R. 12 East, and it appeared of record that on the 5th day of May, 1904, the said tract of land was selected by Wallace Thursday for himself on the 13th day of May 1904 by Jesse L. Harnage and on the 26th day of May 1904 by Annie M. Martin for herself.

The Contestant by W. S. D Moore, his next friend, further states that at all the times herein mentioned the said Samuel Bob was the owner and in possession of all the improvements upon the above de-

scribed tract of land, being inclosed and partly in cultivation. That this application to institute contest proceedings for the above described lands is made in order that the rights of Samuel Bob therein may be protected pending the final determination of Cherokee Allotment Contest No. 830 entitled Ella E. Heady vs. Samuel Bob and that by the institution of this contest proceedings it is not the desire or intention of said W. S. D. Moore as next friend of the said Samuel Bob to waive any rights whatever that said Samuel Bob may have to the land involved in #830.

Wherefore, contestant prays that Samuel Bob be permitted to take in allotment the tract of land herein described. W. S. D. Moore says that he believes the statements contained in the foregoing complaint are true.

(Signed)

W. S. D. MOORE.

Witnesses to mark:

65

(Copy.)

Department of the Interior, Commissioner to the Five Civilized Tribes.

MUSKOGEE, INDIAN TERRITORY, September 25, 1907.

Cherokee Allotment Contest No. 926.

ANNIE M. MARTIN, Contestant,

vs.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestees.

Land in Controversy: N. E. /4 S. W. /4 less 3.08 acres for K. O. C. & S. R. R. right of way; N. W. /4 S. E. /4 Section 13, Township 26, North Range 12, East of the Indian Meridian.

Appearances:

Contestant appears in person and by S. C. Magee and George C. Butte Attorneys.

Contestee appears in person and by Veasey and Rowland Attorneys.

The citizenship of Wallace Thursday one of the contestees herein having been finally determined adversely to the said Wallace Thursday this contest is dismissed as to the said Wallace Thursday.

Veasey & Rowland representing Samuel Bob in Cherokee Allotment Contest Case 830 move the Commissioner for the dismissal of the amended complaint filed by Samuel Bob on October 26, 1906 by W. S. D. Moore as next friend of the said Samuel Bob.

FOR THE CONTESTANT.

ANNIE MARTIN being first duly sworn testified as follows:

Examination by the Commissioner:

Q. State your name.

A. Annie Martin.

Q. Age?

A. Twenty-eight.

Q. Post Office Address?

A. Bartlesville I. T.

66 Q. In Cherokee allotment contest No. 926 styled Annie M. Martin Contestant vs. Wallace Thursday and Jesse L. Harnage, Contestees there is in controversy the N. E./4 S. W./4 less 3.08 acres for K. O. C. & S. Railroad right of way and N. W./4 S. E./4 Section 13 Township 26 North Range 12 East of the Indian Meridian; are you acquainted with that land?

A. Yes sir.

Q. Are you the Annie M. Martin who is contestant in Cherokee Allotment Contest No. 926?

A. Yes sir.

Direct examination.

Mr. Magee: :

Q. State your maiden name.

A. My name was Annie Mary Bob.

Q. Were you known by other names than Annie Mary Bob?

A. Some called me Lizzie Bill and Lizzie Wildbill.

Q. Were you also known by the name of Anderson?

A. Yes sir.

Q. State to the Commissioner your father's name.

A. My father's name was William Bob Anderson.

Q. By what nickname or short name was William Bob Anderson known?

A. Wild Bill.

Q. State if you know what was his Indian name?

A. Quopon.

Q. Mrs. Martin where were you born; do you know?

A. I was born down on the old home place.

Q. What do you mean by the old home place?

A. Where Mary Thursday lives.

Q. Is the land in contest here a part of the Mary Thursday improvements of which you speak and where you were born?

A. Yes sir.

Q. When were you born; do you know?

A. 1879.

Q. Were you enrolled if you know?

A. Yes sir.

Q. When?

A. 1880.

Q. How long did you live on the Mary Thursday improvement?

A. I lived there all the time till my father died off and on.

Q. Was that old home place the improvements of your father originally?

Objected to as leading.

Q. Who was the owner of that original improvement?

A. It belonged to my grandmother and father.

Q. Was it originally known as the Bill Bob improvements also?

Objected to as leading.

Q. Did your father own a residence at any time upon that improvement?

A. Yes sir.

Q. Where was that residence located with reference to the allotment in controversy?

A. The house was a little south and west of where the old house is now; where they live now.

Q. A little South and West of the house in which Mary Thursday lives?

A. Yes sir.

Q. Where is it with reference to the house in which you live?

A. I will call it Southwest.

Q. How long did your father live in that house?

A. He lived there until the time he died. He would go away and stay a week or two on a visit.

Q. Did he die in the house?

A. Yes.

Q. Where was he buried?

A. Buried on that place.

Q. Buried on his own place?

A. Where him and his mother made the place.

67 Q. How long did you live in that house?

A. I stayed there till he died.

Q. Do you remember when your father died?

A. Yes sir.

Q. When was it if you know?

A. He died in 1889.

Q. Who was living with you and your father on the land in controversy when he died?

A. My mother, my grandmother and Wallace Thursday.

Q. Do you mean to say your mother was living there when he died?

A. Yes.

Q. When did your mother die?

A. O- she died in 1885.

Q. Died before your father died?

A. Yes sir.

Q. And your father remained there and kept the children did he?

A. Yes sir.

Q. Up to when?

A. Till he died in 1889.

Q. What is your grandmother's name?

A. Mary Thursday.

Q. Where was she living?

A. She was living with him.

Q. At this time?

A. Yes sir.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. What relation if any is he to you?

A. Step grandfather I reckon.

Q. Step grandfather?

A. Yes sir.

Q. What relation is Wallace Thursday to Mary Thursday?

A. He claims to be her husband.

Q. When were they married if you know; was it before or after your father's death?

A. It was after my father's death.

Q. Was Wallace Thursday living there with your father and grandmother the year before he was married?

A. Yes he was.

Q. How old were you when your father died?

A. I was about nine or ten years old.

Q. How long after your father's death were you taken away from that place?

A. It was just a little while before the big payment.

Q. Do you mean the payments of '93 and '92?

A. Yes sir.

Q. How did you come to leave the place after your father's death?

A. I was stolen away from there.

Q. By whom?

A. Old man Frenchman.

Q. Do you know his first name?

A. No.

Q. State how it happened you were stolen.

A. Him and his wife came to Wallace Thursday's one day and the old man got Thursday out and was talking with him, old man Frenchman, and she took me on her back and slipped out through the orchard to where they had their team tied and drove into Bartlesville.

Q. Do you remember that?

A. Yes sir.

The Commissioner:

Q. How old were you at that time?

A. Nine or ten years old.

Mr. Magee:

Q. How long did you live with Mr. Frenchman?

A. I was not there very long.

Q. About how long?

A. I don't know how long.

Q. When were you married?

A. 1898, 7th day of November.

Q. You went to Mr. Frenchman's you stated a while ago about 1891.

A. Yes sir.

Q. How long did you live with Mr. Frenchman?

A. I went off to school in 1893. I went to school and stayed two years.

The Commissioner:

Q. Did you go from Frenchman's to school?

A. Yes sir.

68 Q. Who sent you to school.

A. Jasper Exendine.

Q. Was that with the consent of Frenchman.

A. I don't know.

Q. You left Frenchman's custody to go to school at that time did you.

A. Yes sir.

Mr. Magee:

Q. Is this the same Jasper Exendine who purchased some land from your father while he was living.

A. Yes sir.

Q. In 1898 you say you married.

A. Yes sir.

Q. To whom.

A. George W. Martin.

Q. Did you hold any conversation with Mary Thursday and Wallace Thursday over the title of the land in question on or about the time you were married, if so state what it was.

A. Yes I and my husband went down there right after we married on a visit down to Wallace Thursday and we were there three or four days and one Sunday morning we were fixing to leave and Thursday come out and called us to one side, wanted to know if I had any land; I told him no; he said That's all right; I've got your allotment here; your father requested us to have your allotment here with Sam; he said he wanted to hold it until allotment and I told him alright.

Q. Did you hold the conversation with Mary Thursday at the same time.

A. Yes sir she was there.

Q. What conversation did you hold with her.

A. I told her what Thursday said and she said it was alright; she wanted me to have my allotment right beside my brother's Sam Bob.

Q. Did she at that time tell you anything about the title of the land on which she was living?

A. She told me she had drawn my father's money and my money

and spent it for the farm, and maintaining the family and she said I had a right to get my allotment there with the rest of the family.

Q. Who was housekeeper at that time, 1898, for Wallace Thursday?

A. Mary Thursday.

Q. Was she doing all the work in and about the home.

A. Yes sir.

Q. Caring for your children was she.

A. 1898?

Q. Yes.

A. No.

Q. Did she act like an insane person when she was telling you that.

A. No sir she didn't.

Q. Was she ever to your knowledge accused of being insane.

A. O she acts kinder queer sometimes but not all the time; she always talked sensible to me.

Q. At that time.

A. Yes sir.

Q. Does she not at this time perform the household duties for Wallace Thursday.

A. Yes.

Q. Does she do it as an insane person would do it.

A. No sir.

Q. Or as a person of ordinary sense would do it.

A. She does the work like anybody would of her age. She's not able to do much; she must be over eighty or more.

Q. Was the conversation you have just recited to the Commissioner ever repeated to you after 1898 at any time.

A. Yes sir every time I went down there she told me that and not bother about getting any other land, that my land was right there with Sam Bob and they would guarantee me that I would get it when the time came and for me not to worry about looking for any other land.

Q. That was the conversation between you and Wallace.

A. Yes sir.

Q. Did Mary Thursday ever repeat that conversation to you.

A. Yes sir she has told me that I had the right to the place.

Q. Have you been led to believe from 1898 on up to the present time that this land was to be reserved for you for allotment by Mary Thursday.

69 A. Yes sir.

Q. In lieu of the lands of your father which she had filed upon.

A. Yes sir.

Mr. Veasey: We move to strike that out on the ground that the question is leading.

Q. The Bell Bob improvement you speak of on which Mary Thursday filed includes the land in controversy does it?

Objected to as leading.

A. Yes sir.

Q. Did Wallace Thursday ever make you any bill of sale to this land?

A. Yes sir.

Q. When.

A. The first day of November 1906.

Q. Where is that bill of sale.

A. It-s supposed to be here in the Indian Agent's office.

Q. Is this land on which you filed the land in controversy improved or uncultivated land.

A. It-s improved.

Q. How long to your knowledge has this land been under a state of cultivation.

A. About twelve or thirteen years.

Q. Thirteen years to your own knowledge.

A. Yes sir.

Q. What improvements if any are upon this land.

A. A fence all round that eighty and round Sam Bob's.

Q. What other improvements besides the fence.

A. Corn.

Q. What other improvements.

A. A house.

Q. Whose house.

A. My house.

Q. Are you at present living upon the land.

A. Yes sir.

Q. In possession of it.

Mr. Butte:

Q. Have you at this time Mrs. Martin or have you at any time had in your possession or in your control any land except the eighty acres involved in this contest.

A. No sir.

Cross-examination.

Mr. Veasey:

Q. At which land office or where was the land office located when you filed on this land?

A. Tahlequah.

Q. Where were you living when you filed on the land.

A. I was living in Bartlesville.

Q. How long had you been living in Bartlesville before that time.

A. Two years.

Q. Where had you lived before that two years.

A. We lived in the house east of Wallace Thursday.

Q. How long had you lived there.

A. We lived there from March till the next January.

Q. Where did you live before that time.

A. Lived in town in Bartlesville.

Q. How long had you lived in Bartlesville at the time you now

mention before you moved to that house East of Wallace Thursday's place; how many years.

A. A few months there at Bartlesville.

Q. At what places have you lived since your marriage.

A. I lived right East of Sam Bob in the old Bob house when I first moved down there and I moved from there into the old house my father built and I lived there three or four months.

70 Q. When was that.

A. That was in '99.

Q. 1899.

A. Yes sir.

Q. You know the land that Mary Thursday has selected in allotment, do you not.

A. Yes sir.

Q. Are there any buildings on that land that she selected.

A. Yes sir.

Q. Who lives in those buildings at present.

A. She lives in them.

Q. With Wallace Thursday.

A. Yes.

Q. How long has she lived in those buildings or in that house.

A. I don't know just how long.

Q. About how long.

A. I don't know. I can't say.

Q. Is the house in which she now lives the house in which your father died.

A. Yes sir.

Q. Was the house in which your father died on the same land that was selected by Mary Thursday as her allotment.

A. Yes sir it lies right southwest of there but I think he has sold that part, I don't know whether she takes that or not.

Q. How far from the house in which Mary Thursday now lives was the house in which your father died; about how far.

A. I think about a quarter, maybe a quarter I don't know.

Q. Do you know where Mr. Speaks lives.

A. Yes sir.

Q. Was the house in which your father died near that place.

A. Yes sir I reckon you would call it a little northwest from there.

Q. You are not positive whether Mary Thursday has filed on the land upon which the house in which your father died was or not do you.

A. That's what I mean; I think he sold that; I don't; I'm not sure; he sold forty acres down there some place but I don't know whether it took that in or not.

Q. You think Wallace Thursday sold it?

A. Yes sir.

Q. How old were you when you say Mr. Frenchman stole you away from Wallace Thursday.

A. I was about nine or ten years old.

Q. From that time forward you have never lived with Wallace or Mary Thursday have you; can you answer that question.

A. I don't know whether I did or not; I don't guess I did. I don't know whether I went back or not; I know Wallace Thursday come for me several times.

Q. When you were stolen away how much land did Wallace Thursday have under improvements or in the old improvements.

A. I don't know.

Q. What do you mean when you say the old place.

A. That's part of where Mrs. Mary Thursday lives now.

Q. Part of the land that she has selected in allotment for herself.

A. Yes sir.

Q. Do you know as a matter of fact whether the land in controversy was any part of the old Mary Thursday place; do you know that absolutely.

Q. Which do you mean, the land I filed on; she bought that place.

Q. Mary Thursday bought that place.

A. Yes sir.

Q. From whom did she buy it.

A. Bought it from Bill Johnson.

Q. Whose money did she use in paying for it.

A. I don't know; my brother's I guess.

Q. Do you know as a matter of fact Mrs. Martin that she didn't use any part of your money in buying it.

A. I don't know.

Q. Don't you know as a matter of fact that Mr. Frenchman collected your Delaware money.

A. He drew some of it.

Q. Don't you know as a matter of fact that neither Wallace Thursday nor Mary Thursday never drew any of your money.

A. Yes sir.

Q. When was that; when you were living with them?

A. Yes sir.

Q. After you left them then did they draw any money.

A. They drew my father's money after he died; they drew my money; old man Frenchman was appointed guardian.

71 Q. Who drew your principle Delaware payment money.

A. I think Frenchman.

Q. Those were the two payments of five hundred dollars in '92 and three.

A. Yes.

Q. And the payments before that time were simply payments of fifty and sixty dollars or something like that; small payments.

A. Yes sir.

Q. Now after Mary Thursday or Wallace Thursday purchased the land that you filed on as you have testified when was the first time that you took possession of that land.

A. Thursday told me he would hold it till allotment; filing time. Wallace Thursday; and so I let him do that because he said he would hold it till allotment; filing time. Wallace Thursday; and

so I let him do that because he said he would do just as he said and when allotment came I went and filed on it.

Q. You filed at Tahlequah.

A. Yes sir.

Q. Who paid your expenses down there.

A. My husband himself.

Q. Who was with you at the time.

A. My husband.

Q. Wasn't Wallace Burford with you.

A. No sir.

Q. You know as a matter of fact your husband got the money to pay your expenses to Tahlequah from Wallace Burford don't you?

Objected to.

A. We had money to go there on.

Q. When the Sam Bob case was heard at Bartlesville didn't you testify that Wallace Burford gave your husband twenty-five dollars for his expenses to Tahlequah.

A. I don't know.

Q. Don't you know as a matter of fact he did get it.

A. He borrowed it from Mr. Burford; he ran short of money and he borrowed from Burford.

Q. Was it Burford that suggested that you file on this land.

A. No sir.

Q. With whom did you make arrangements to give an oil lease on this land while you were at Tahlequah.

We object to that question for the reason that the entire line of examination which has been gone into for the last five minutes is immaterial although we haven't specifically objected to every question knowing the fixed rule of the Commissioner to disregard this line of testimony, at the same time we think that some step ought to be taken to prevent the burdening of the record any further by such immaterial and irrelevant a line of examination and if the witness has made an oil and gas lease she has a perfect right under the law to do so and we cannot see that it is in any wise material to this case whether she has done so or not.

Question repeated.

A. No one.

Q. Have you made any arrangements since that time to give an oil lease on your allotment.

Mr. Butte: We object to the question.

A. Yes I have.

Q. Are the people to whom you agreed to give this lease taking care of this action for you; paying the expenses of it.

We object to the question.

A. No sir.

Q. Are you or your husband paying the expenses of this case.

We object to that question.

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A. I'm standing my own expenses.

Q. Do you employ your own attorney in this case.

A. Yes sir.

We object to the question.

Q. Have you paid him out of your own money.

We object to the question.

A. That's my business.

Q. At whose suggestion did you build the little house on this place which was put there this spring?

A. My own.

Q. Did you pay for the lumber that went into that house.

A. Yes sir.

Q. Out of your own money.

A. Yes sir.

Q. How much did it cost you.

A. I don't know.

Q. You don't know; where did you get the lumber.

We object to the question as wholly irrelevant, and immaterial; it makes no difference whether she got the lumber at the Bartlesville lumber yard or South Africa as far as the issues of this controversy are concerned.

A. That's for me to know.

Q. In paying for this lumber did you pay it in cash or did you pay for it with a check.

We object to the question for the reasons heretofore given.

A. It was in cash.

Q. Who gave you the cash.

We object to the question for the reasons heretofore stated.

A. I drew money here about a year ago last April.

Q. How many rooms to this house Mrs. Martin.

A. Three.

Q. Is it a box house.

A. Yes sir.

Q. How many days were they in building it.

A. I can't tell, on account of them bothering me so much.

Q. Who bothered you.

A. Jess Harnage.

Q. Did they have your husband arrested.

A. Yes sir.

Q. Did they bring a suit against you to keep you from building it.

A. Yes.

Q. Is that suit still pending at Bartlesville?

A. I don't know; never heard anything more about it.

Q. Is old man Frenchman related to you any way.

A. Not as I know of.

Q. When was this house which has been mentioned in the testimony put on the place.

A. I started in along the last or middle of May of this year.

Q. And you are now living on the place in that house.

A. Yes sir.

Q. You filed your contest case in 1904.

A. Yes sir.

Q. Your father never put any improvements on the eighty acres that you have filed on had he?

A. No.

Q. And the only improvements that you have ever put on the place is this little house you have described.

A. Yes sir.

Q. But you did have some sort of understanding with Wallace Thursday and Mary Thursday that they would permit you to file on there when the time for selecting allotment came.

A. Yes sir.

73 Q. And that was in 1898.

A. Yes.

Q. The time you married.

A. Yes sir.

Q. How many acres are in cultivation on this eighty.

A. There's about forty or fifty as near as I can catch it.

Q. Is it in corn this year.

A. Yes sir.

Q. Is this house you have described the only building on the eighty.

A. Yes sir.

Q. It's fenced on three sides or four sides this particular eighty.

A. Well there's a partition fence runs through there between that eighty and Sam's eighty and there's a fence on the West and on the East and between my grandmother's and that eighty.

Q. Practically fencing this eighty off from other land.

A. No that was all in one field.

Q. What do you mean by it's all in one field.

A. I mean it's all in one field and Bud Heady put a fence between that eighty and Sam Bob.

Q. But as it is now there are fences on all four sides of this eighty aren't there.

A. Yes sir.

Q. Do you know who put that land that's in cultivation on this eighty in that condition, on the eighty you filed on, who reduced that land to cultivation, who broke that land out.

A. I don't know who broke it out but Mr. Dedman worked for Mr. Johnson when it was Johnson's place.

Q. Do you know who put these fences on the three sides of the place; I'm not speaking of the fence that Heady put there but the other fence.

A. I suppose the fence on the South side, my grandmother put that fence there.

Q. Who put the fence on the East and West.

A. I don't know.

Q. Do you know positively that your grandmother put that fence on the South.

A. I think I do.

Q. You didn't see it put there did you.

A. No.

The Commissioner:

Q. You say you were also known by the name of Bob.

A. Yes sir.

Q. Are you any relation to Sam Bob.

A. Yes sir.

Q. What relation.

A. He's my brother.

Q. What was you- mother's name.

A. Lema Octopus.

Q. Has she an English name.

Mr. Veasey: We will concede that's the name.

A. No sir.

Q. Are you any relation to Wallace Thursday or Mary Thursday.

A. Mary Thursday is my own grandmother and Wallace Thursday is my step grandfather.

Q. Who were you living with when you were stolen by Frenchman.

A. My grandmother Mary Thursday.

Q. How long prior to that time had you been living with Mary Thursday.

A. Ever since I was born.

Q. Where did you live with Mary Thursday.

A. At my old home.

Q. Where was that from the eighty acres in controversy here.

A. South.

Q. South of this eighty.

A. South and west.

Q. How far from the land.

A. From the land I filed on?

Q. Yes from the land you are contesting now to the best of your knowledge, the house where you were living.

A. You mean from the house where she lives now?

Q. No the house where you lived with Mary Thursday until you were stolen by Frenchman from the land that's in controversy here.

A. About a quarter of a mile.

74 Q. You stated you were nine years old or ten when stolen by Frenchman.

A. Yes sir.

Q. Was your father or mother living at that time.

A. No sir.

Q. How long did you remain with Frenchman.

A. I wasn't there but just a little while.

- Q. A year.
- A. Well I went away to school in 1893, and stayed three years.
- Q. What year did you go to live with Frenchman.
- A. I don't know what year it was he stole me.
- Q. How long were you living with him after he stole you until you went away to school.
- Q. I don't know how long, I hadn't been there long.
- Q. Was it a year or two years or six months or don't you recollect.
- A. I don't recollect just how long it was.
- Q. What was Frenchman's other name.
- A. He hasn't got any as I know of.
- Q. Did he ever have any legal control over you.
- A. No not when he stole me.
- Q. Did he afterward.
- A. After he found out there was going to be big things come out he come down and asked to be appointed guardian over me.
- Q. Was he appointed your legal guardian?
- A. I guess he was.
- Q. You say that Exendine furnished the money for sending you to school.
- A. Yes sir.
- Q. Is Exendine any relation to you.
- A. Not as I know of.
- Q. Was he to Frenchman.
- A. Not as I know of.
- Q. Was he engaged in any business with Frenchman.
- A. Not as I know of.
- Q. How long did you remain at school.
- A. Three years.
- Q. Where did you go to school.
- A. Lawrence, Kansas.
- Q. Who defrayed your expenses at school.
- A. The government.
- Q. After leaving school where did you go.
- A. At Frenchman's about a month.
- Q. Then where.
- A. I went to working out.
- Q. Where did you work.
- A. I worked at Mr. Young's and when I wasn't working I stayed at Mrs. Easey's.
- Q. Are you a Delaware citizen.
- A. Yes sir.
- Q. What became of the payments that were made to you.
- A. The small payments my grandmother and father drewed them, and after he died they drawed my money and his money.
- Q. After Frenchman was appointed your guardian did he draw any of your money.
- A. He drawed the two big payments; he used it on his own benefit.
- Q. Did you ever reap any benefit of it.
- A. No sir.
- Q. Here is the eighty acres in controversy; are you familiar with

this land (showing witness the government plat); this eighty here is the Sam Bob allotment; the eighty in controversy lies directly south of Sam Bob's eighty; here is a fence on the South thirty acres of the eighty in controversy (leaving out the Southwest ten acres) running East and West across that thirty; is that fence there now to your knowledge.

A. There's one fence there.

Q. Whose fence is that.

A. I suppose my grandmother put it there.

Q. Mary Thursday.

A. Yes sir.

Q. Who controlled the land when you lived with the Thursdays north of that fence.

A. Mr. Johnson I think.

Q. William Johnson.

A. Yes sir.

Q. How do you claim this land.

75 A. Because my grandmother bought it with father's money.

Q. From Johnson.

A. Yes.

Q. Do you know William Fields.

A. Yes.

Q. Does he live anywhere round this land.

A. He don't now.

Q. Did he ever.

A. Yes sir he lived just South of the eighty that I filed there just across the line.

Q. Here is a little map in the S.W./4 N.W./4 S.E./4 showing a house under which is marked William Fields; from your knowledge of the improvements on this land does that agree with where Fields lived.

A. I think it does.

Q. Is that house still there.

A. Yes sir.

Q. From this house that William Fields lived in where is the house located that you lived in with Mary Thursday.

A. South and West.

Q. Is it across the railroad.

A. Yes sir.

Q. Did your grandmother Mary Thursday after buying this land from Johnson use it.

A. I don't remember whether it was then or before.

Q. Do you know when she bought it.

A. I think it was in '95.

Q. You say she used you- payment money in purchasing that.

A. No I didn't say anything about that.

Q. Do you know what money she used in buying that from Johnson.

A. She used her money and my brother's money.

Q. Sam Bob's.

A. Yes sir.

Q. Where did you build this house that you are living in now on this land; in what direction from the William Fields house.

A. It's north.

Q. How far.

A. Very near a quarter.

Q. How long have you been in control of this land.

A. Ever since he gave me that bill of sale.

Q. Who gave it to you.

A. Wallace Thursday.

Q. How long ago was that.

A. November.

Q. What year.

A. 1906.

Q. Who was in control of the land prior to that time.

A. Wallace Thursday I reckon; he claimed to be.

Q. Do I understand you to state in your direct examination that your grandmother Mary Thursday told you that she had purchased this land for you.

A. She told me she had bought that land for Sam and his sister because she had spent my father's money on the farm and I should have my land there beside my brother.

Q. Do you know Jess L. Harnage.

A. I know him now.

Q. Did he ever have any improvements on this land or exercise any control over it to your knowledge?

A. No sir.

Q. You are still living on this land are you.

A. Yes sir.

Redirect examination.

Mr. Magee:

Q. When you say that Wallace was in control of this land last November do you mean Wallace Thursday or Mary Thursday.

A. Mary Thursday I guess.

Q. To whom was all this land segregated.

A. My grandmother.

Q. That's Mary Thursday.

A. Yes sir.

Q. Do you know if Wallace Thursday ever held any right or purchased any title to any of the improvements on any of the land held by your grandmother.

A. No sir I don't.

The Commissioner:

Q. Is Mary Thursday living now.

A. Yes sir.

Q. Where is she living.

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A. She lives south of Bartlesville on her home.

Q. Is that round this land.

A. Yes sir south of this land I filed on.

Q. Is she living in the same place she lived when you lived with her.

A. No sir.

Q. In the same neighborhood.

A. Yes sir right joining.

Q. On the same allotment.

A. Yes sir.

Recross-examination.

Mr. Veasey:

Q. Who is farming the allotment you filed on this year?

A. Mr. Nuckols.

Q. What kind of crops on the place.

A. Corn and hay.

Q. Mr. Martin is not doing any farming this year is he?

A. No sir.

Re-redirect examination.

Mr. Magee:

Q. Is Mr. Nuckols your tenant.

A. Yes sir.

Q. Under contract.

A. Yes sir.

Q. By the consent also of Wallace Thursday.

A. Wallace Thursday told me when I was down there after he gave me the bill of sale, he said there's a man going to farm your grandmother's place and you better let him farm yours.

Q. And your grandmother and Wallace consented that you should rent this land to Nuckols.

A. He told me to go ahead and rent to Nuckols.

The Commissioner:

Q. William Fields who lived in this house in the improvement plat, whose tenant was he.

A. Mr. Thursday's and grandmother's.

Q. Is that land practically enclosed with the same improvements as shown on this plat, these red lines indicating fencing.

Q. Is there any fencing between the land you claim and the land of Sam Bob.

A. Yes there's one Bud Heady put in.

Re-re-recross-examination.

Mr. Veasey:

Q. Is there any writing to show that Nuckols is on this land as your tenant.

A. Yes sir.

Q. Where is that.

A. My husband got it in his book.

Re-re-re-redirect examination.

Mr. Butte:

Q. With whom was your grandmother living before your father's death; with whom was she making her home.

A. My father.

Q. On whose place.

A. It was hers and his both.

Q. Do you know what was the North line of that place at the time you were stolen away; you don't know whether or not that place which was owned by your grandmother and your father jointly included the land in contest or any land to the North of it or

77 not do you.

A. No sir.

Q. Was the railroad through there at the time your father died.

A. No sir.

Q. Was the land on which your brother Sam Bob has been allotted included in the original place.

A. No sir.

Q. Was the house in which Fields lives which lies South of your present home included in the original place as made by your grandmother and father?

A. Yes sir what my grandmother and father made.

Q. That was all included in one large enclosure?

A. Yes sir.

The Commissioner:

Q. Is this man Frenchman you refer to living now.

A. Yes sir.

Q. Is he here today.

A. Yes sir.

Q. Did you ever go back to his custody again after you left there when you returned from school and spent a month.

A. No sir I was there just a little while; about a month.

Q. Did you ever go back.

A. No sir.

Q. How old were you then.

A. I must have been about sixteen or seventeen.

Mr. Butte:

Q. Did Mr. Frenchman your guardian provide you any place upon which you could allot.

A. No sir.

The Commissioner:

Q. Did he after you left his house ever give you any money or clothes or take care of you any way.

A. No sir.

Mr. Butte:

Q. Did your grandmother Mary Thursday provide any other places upon which you might allot.

A. No sir.

By consent of the contestant the testimony of contestee's witness William Johnson is taken at this time owing to the fact that Mr. Johnson is not able to remain to testify when contestee's witnesses are introduced.

WILLIAM JOHNSON being first duly sworn testified as follows:

Examination by the Commissioner:

Q. State your name, age and Post Office.

A. William Johnson, forty-seven, Bartlesville, Indian Territory.

Q. In Cherokee Allotment Contest No. 926 entitled Annie M. Martin vs. Wallace Thursday and Jesse Harnage there is in controversy the NE/4 SW/4 less 3.08 acres for K. O. C. & S. R. R. Right of way and NW/4 SE/4 of Section 13 Township 26 Range 12; are you acquainted with that land?

A. Yes sir.

Direct examination.

Mr. Veasey:

Q. Did you at any time own the land described above.

A. Yes sir.

Q. When was that.

A. I first originally broke the land, part of this land in along about, I think about '86, 1886 or '87. I think there sometime
78 about thirty-five acres as near as I could guess at it, in controversy now, that I broke at that time and fenced.

Q. Then what became of it Mr. Johnson.

A. Later than that a year or two I sold to Jacob Wheeler, and he kept it for a couple of years and fenced in a lot more land with it. And then in 1891 the firm of Johnson and Wheeler bought it back.

The Commissioner:

Q. When did you sell it to Wheeler.

A. I think about about '89 or '90 somewhere about that time.

Mr. Veasey:

Q. In 1891 you say it was bought back.

A. Yes sir.

Q. Then how long did you retain ownership and control of the land.

A. Along in 1893 I think I sold it to May Anderson, the firm, it was charged to Mary Anderson on the firm books. Mary Anderson was the wife of Wallace Thursday but we carried it on the books as Mary Anderson for the reason that that was the way her name was on the Delaware roll at that time.

Q. Do you remember the consideration you received for the sale of the place at that time.

A. Eight Hundred Dollars.

Q. Do you have any personal knowledge of whose money was used to purchase that place from you.

A. Mary Anderson's and Sam Bob's.

Q. State the exact nature of that transaction.

A. Well as our books show in a little memorandum that I have taken from the old Johnson-Wheeler books——

Q. Testify to your best recollection.

A. Along in July 1893 to the best of my recollection we sold the place to Wallace Thursday and charged on the books to Mary Anderson.

Q. Do you know as a matter of fact whether a written bill of sale was given at that time.

A. I think it was.

Q. How do you know Mr. Johnson that the Delaware payment money of Mary Thursday and Sam Bob went toward the payment of this place.

A. I received the checks. The payment was made, the last big Delaware payment was made in August 1893 and at that time Mary Anderson owed us on the books \$780.00; they drew about five hundred dollars apiece and her check was turned over to me at the pay ground and her account settled including the payment of the farm; four hundred dollars of that seven hundred and eighty was for the farm; the other four hundred was paid me from money he had left over from the first payment.

Q. The money that was used in the first place, whose money was that.

A. It was Sam Bob's and Mary Anderson the head of the family drew for the whole family; no distinction was made.

Q. Who was that check made to.

A. Mary Anderson I think, the custom at that time.

Q. That included all the family of Mary Anderson.

A. Yes sir.

Q. How much of the land in controversy was included in this sale to Mary Anderson and Sam Bob in July 1893.

A. All of this land.

The Commissioner:

Q. Is the Mary Anderson you are referring to the person who has been referred to here as Mary Thursday?

A. Yes, sir.

79 Cross-examination.

Mr. Butte:

Q. Do you know the contestant Annie Martin.

A. I have seen her yes sir.

Q. Do you know her father William Bob.

A. I knew Wild Bill; I don't recollect his Indian name; he went on the roll as his Indian name; he was better known as Wild Bill.

Q. Do you remember about when he died.

A. I can't exactly tell; along the latter part of the eighties though I think.

Q. Do you remember the circumstances of his death.

A. Yes sir I remember he was sick at Wallace Thursday's.

Q. Do you know where he was living at the time of his death.

A. He was at Wallace Thursday's; I know the mother of these children died at Wallace Thursday's.

Q. Do you know who owned the place you described as Wallace Thursday's at the time Bill Bob lived there.

A. I suppose Mary Anderson and Wallace Thursday made the place; he was living with her.

Q. Do you know of your personal knowledge.

A. Wallace Thursday made the place and he was living with Mary Anderson at that time; he was not supposed to hold citizenship and it went in his wife's name.

Q. You mean Wallace Thursday held the place in his wife's name.

A. Wallace Thursday was not supposed to be a citizen and he was living with Mary Anderson a Delaware woman and the place was always known in her name.

Q. That was after the time of Wild Bill's death.

A. Yes sir and before.

Q. Do you know whether or not Mary Thursday drew the Delaware payments or any of the Delaware payments of Annie Martin the contestant.

A. No sir she didn't draw them as far as I know.

Q. Do you know or not.

A. Well I know this, they traded with us, and this girl never lived with Mary Anderson; she always lived with Frenchman, he drew her money as head of the family; she was enrolled with his family; in trading with these Delawares we put the head of the family down and how many shares they drew; Mary Anderson drew her own share and Sam Bob's share and this girl was enrolled with Frenchman.

Q. Do you know when Frenchman was appointed the legal guardian of this girl the contestant.

A. Not exactly; I think it was the last money they drew from the Cherokee strip when they drew about two hundred dollars to the head.

Q. Was that the time this girl was living with Frenchman.

A. Yes sir that's my understanding; I don't know the girl; never have seen her.

Q. With whom did she live before she lived with Frenchman.

A. She lived with her mother and her mother lived with Frenchman round in that neighborhood; always lived in that neighborhood with Wild Bill and stayed round old man Frenchman's place.

Q. Did she not also live upon the place a portion of which is involved in this contest.

A. No sir not that I know of; I was living within a mile of it; never knew them to live there except this woman came down there sick and died at Wallace Thursday's place; the mother of these children.

Q. Their father died there also did he not.

A. Yes sir.

Q. Do you know what was the north boundary of what you call the Mary Anderson place.

Q. I mean what was the north boundary of the place with reference to the land involved in this contest.

80 A. Well the old Cherokee law kept one citizen a quarter of amile away from the improvements of another and when I stated this farm I went just as close to Mary Anderson's place as I could go; about a quarter of a mile from that old improvement and the south boundary of this place in controversy, that is the west part of it was the north boundary of the Mary Anson place.

(N. B.—Where the name Mary Anderson appears in this testimony it should be Mary Anson.)

Q. Do you know where the tenant house occupied at one time by William Fields is located.

A. Yes, sir.

Q. Was that part of your place or part of the Mary Anson place.

A. Part of the Mary Anson Place.

Q. This eighty acres involved in this contest as bought by you and later on sold by you to Mary Anson included lands lying to the north of it did it not.

A. Yes, sir.

Q. Extending so as to include the present allotment of Fred McDaniel and Sam Bob.

A. Yes, sir.

Q. Part of the money which Mary Anderson or Mary Thursday paid you for your bill of sale to the improvements, upon what portion of the land in contest was her own money and what part was the money of Sam Bob.

A. Well sir I can't tell you; as I said before the balance on the farm, the four hundred was charged to Mary Anderson's account and her merchandise account was \$380.00 at that last payment and she drew in the neighborhood of one thousand dollars, her money and Sam Bob's money was in the neighborhood of one thousand dollars.

Q. Was Sam Bob living with her at the time.

A. Yes sir, always lived with her.

Q. What relation is Sam Bob to the contestant if you know.

A. He's her brother.

Redirect examination.

Mr. Veasey:

Q. Do you know as a matter of fact who actually improved the old Mary Thursday Improvements south of the Johnson Keeler place.

A. Wallace Thursday.

Q. Did Wild Bill take any part in making these improvements.

A. I can't tell you about that.

Q. He did live there a while and worked there.

A. He was back and forth between old man Frenchman's and Wallace Thursday; had no settled place.

Recross-examination.

Mr. Butte:

Q. But his family lived with Mary Anson.

A. No sir none of them lived there only Sam Bob's mother died there and they took Sam Bob and raised him.

Q. When was that.

A. Along about 1885 I think she died.

Q. Where was the contestant at that time.

A. I can't tell you.

Mr. Veasey:

Q. Was she at Mary Thursday's place at that time.

A. I have never known her to live there; she always lived at Frenchman's.

81 The Commissioner:

Q. Do you know anything about Frenchman having stolen this girl.

A. No, sir.

Q. When was this Delaware payment made that you have referred to.

A. It was made in August 1893 to the best of my recollection; that is the only one.

Q. What was that per capita payment.

A. About five hundred dollars; they drew that from the Government and they drew it in two payments, about a year or a year and a half apart, and they drew the first half along about 1891 I think and the other last half in August 1893.

Q. I believe you stated that the eight hundred dollar consideration in this transfer from you to Mary Anson was a check that had been paid in this Delaware payment.

A. No the last payment, when she paid her account that check was turned over to me and paid that way.

Q. What was the amount of that check.

A. About a thousand dollars; there was two shares; Mary Anson and Sam Bob.

Q. Were they the only two in Mary Anson's family at that time.

A. Yes, sir.

Q. Do you know of your own knowledge who drew the payment for this contestant.

A. Well I know, as traders we kept track of those things as trading with the Indians we kept track of how many shares they drew and what they drew and I knew that Frenchman drew this girl's money.

Q. How much land did you sell to Mary Anson, that was charged

to Mary Anson to sell to Wallace Thursday for this eight hundred dollars.

A. I suppose there was two hundred acres or more.

Q. You are very familiar with this land at the present time.

A. Yes, sir.

Q. Was this eighty acres known as Sam Bob's allotment part of the land you sold.

A. Yes, sir.

Q. And was the eighty in controversy, any of that a part of the land.

A. Yes, the line might cut a little off of it but it was practically—

Q. Where does the balance of the land lie.

A. North of Sam Bob's allotment joining the town of Bartlesville.

Q. You are a citizen.

A. By intermarriage, yes sir.

Q. Did you ever appear before this office and designate the improvements on any land to be disposed of under the Act of March 2, 1907.

A. No sir.

Q. As an intermarried citizen?

A. No sir I did not designate any land.

Q. Wallace Thursday was a non citizen and I believe you state for that reason you charged the transfer of this land to Mary Anson.

A. Yes sir it was her money that was paying for it.

Q. Did Mary Anson occupy all the land you transferred to her after the transfer was made.

A. She controlled it yes.

Q. Do you know what she did with the remainder of the land transferred to her by you out side of the allotment of Sam Bob and the eighty acres in controversy.

A. It was sold to Frederick McDaniel.

Q. Who by.

A. I understand by Wallace Thursday; I didn't see the bill of sale.

Q. Do you know when that transfer was made.

A. It must have been nearly four years ago.

Q. Do you know whether or not this girl after she returned from school ever lived with Mary Anson.

A. No sir I do not.

Q. Do you know where she did live.

A. She has been living at Bartlesville for the last three or four or five years, maybe longer than that with her husband George Martin.

I suppose, I see him there on the streets.

82 Q. You can't state of your own knowledge whether she ever did live with Wallace Thursday or Mary Anson after her return from school.

A. No, sir.

Mr. Butte:

Q. Have you any interest in the outcome of this contest.

A. None whatever.

Q. You have no interest in the lease of these premises or in the lessee company that holds the lease covering the land in contest.

A. I don't know who owns the lease.

Q. If the Delokee Oil and Gas Company holds the lease have you any interest in that company.

A. No, sir.

Continuation of Testimony on Behalf of Contestant.

J. P. Lyon being first duly sworn testifies as follows:

Examination by the Commissioner:

Q. State your name age and Post Office Address.

A. My name is J. P. Lyon, age twenty-eight, Post Office address Bartlesville, Indian Territory.

Q. Mr. Lyon in Cherokee Allotment Contest No. 926 entitled Annie M. Martin vs. Wallace Thursday and Jesse L. Harnage there is in controversy the NE/4 SW/4 less 3.08 acres for K. O. C. & S. R. R. right of way and the NW/4 SE/4 Section 13 Township 26 North Range 12 East; are you acquainted with that land.

A. Yes I made a survey of it.

Direct examination.

Mr. Magee:

Q. Mr. Lyon is that the survey made by you of the land in controversy.

A. Yes sir that's the plat that was made by me from the survey.

Q. Will you explain the lines you have drawn upon the map and what they indicate.

A. The heavy line extends around the border, the heavy black line, the fence is indicated by a light line, the crosses indicate the fence, the railroad is indicated by heavy line with open center and the right of way fence is indicated by the dotted lines.

The Commissioner:

Q. That black line indicates nothing except the border of the eighty acres.

A. Yes, sir.

Mr. Magee:

Q. That's all the improvements you found upon the land when you made the survey.

A. It is.

Q. From your observation and your experience as a surveyor were the lines indicating fence, was the fence old or new, established for a period of time.

A. I didn't see any fence that indicates having been right recently established; now the only fences there are, the newest looking fence is the fence on the south a part of the south line extending from

83 a point about 971 feet west from the southeast corner to the right of way of the Atchison Topeka & Santa Fe Railroad; there is a two wire fence that indicates having been built since the remainder of the fence on the south line, that is the fence east from the point indicated to the southeast corner which was a five wire fence.

Q. Is there a row of posts along the upper line of that allotment going east.

A. Yes sir, and west.

Q. I noticed on the north line at a point about 250 feet east from the center of section thirteen near a gate which was the entrance into a field from Martin's house, one post and at a point about a hundred or hundred and fifty feet another post; those two are the only posts I remember having noticed; they are about two to three feet inside, that is south from the fence, near the north line, the fence doesn't follow the line exactly.

Q. Is the fence running north and south on the west end of this allotment practically a new fence?

A. It's a fence in good repair and from the general appearance I should say it hasn't been there more than from two to five years; of course it's hard to make an accurate statement but it's a woven wire fence and is a modern fence.

Q. State whether or not that is a three wire fence and from your judgment had that fence been built about 1889 or later.

Q. It is a woven wire fence; at the northwest corner the fence is 16.5 feet west from the northwest corner, at the southwest corner the fence is 16.6 feet west from the southwest corner; it's a woven wire fence with one or two wires on top, I believe, two.

Q. Where is the crooked line inside of the fence on the west side of the allotment, what is that line, what does it represent?

A. 254 feet east from the southwest corner is a fence crossing the south line that runs in almost a northwest direction to a point 238 feet east from the center line of the west line and then follows in a zig zag course following a draw, it joins the A. T. & S. F. right of way at a point about forty-five feet south from the north line, it's an old fence appears to have been there a number of years; I can't state the age.

Q. Is that fence you call the old fence in good or bad repair.

A. It's in poor repair from the fact that it has been used as the line between the cornfield and the pasture which is in the extreme west end; there's about nine acres of corn west of the Santa Fe Railroad and west of the corn there's about seven acres pasture land; this fence seems to have been used as a fence to protect the corn, it isn't what I would call a good fence but it's in fair repair for an old fence.

Q. State the character of the fence on the east end of that allotment.

A. On the east end of the allotment there's a fence at the northeast corner, 9.5 feet west from the northeast corner and at the

southeast corner of the allotment said fence is 7.5 feet west from the line; it's a substantial wire fence.

Q. Is the fence practically a new fence.

Objected to as leading.

Q. State the character of the fence.

A. A good substantial wire fence I should judge, it's possibly from three to five or six years old; I should judge about three; it's hard to make a definite statement.

Q. State the character of the fence running along the north side of that allotment.

A. On the north side of the allotment at the northwest corner there has been a fence which is 18 feet and then on the allotment line at the Northwest corner extending east to the Santa Fe right of way fence where it is 13 feet along the line, there has been a fence along there but it isn't in good repair now, the wires are lying on the ground and the posts are standing, the fence on the northwest

84 of the Santa Fe tract and then beginning at a point north of the intersection of the east line of the Santa Fe right of way fence on the north line of the allotment, nine feet north

there's a three wire fence in good repair running a little south of east and crossing the line at a point about 100 feet west from the center of section thirteen and from that point east to the northeast corner of the allotment the fence is south of the line, varies from one to three feet, three to four feet; now there's one point in the fence where the wires are loose from the posts; there's one point in the north fence between the Santa Fe right of way and the center of section 13 where the wire has been taken down, presumably for hauling hay across there, the wire isn't broken I don't think.

The Commissioner:

Q. Are you a practical surveyor Mr. *lying*.

A. Yes I have been engaged in engineering and surveying for the past almost eight years, railroad and other work.

Q. When did you make that map.

A. I made the survey on the 29th and 30th of July this year.

Q. You made that map from the notations made at the time you surveyed it.

A. I did.

Q. At whose solicitation was that survey made.

A. I was engaged to make the survey and plat by Mr. Magee.

Mr. Magee: I offer it is evidence.

The plat will be received and marked contestant's Exhibit A.

JOHN R. WILLY being first duly sworn testified as follows:

Examination by the Commissioner:

Q. State your name age and post office.

A. My age is fifty-seven.

Q. Post office address?

A. Glenoak. John R. Willy.

Q. In the Cherokee Allotment Contest No. 926 entitled Annie M. Martin vs. Wallace Thursday and Jesse L. Harnage there is in controversy the N. E./4 S. W./4 less 3.08 acres for K. O. C. & S. R. R. right of way and N. W./4 S. E./4 Section 13 township 26 range 12; are you acquainted with that land.

A. No not very much.

Direct examination.

Mr. Butte:

Q. Do you know the general location of the eighty acres that is allotted.

A. I know the location of that place but I don't know exactly the sections and quarters.

Q. You don't know the government subdivisions of the land.

A. No.

Q. By what name do you know this place.

A. Mary Thursday.

Q. Did it have any other name before you knew it as the Mary Thursday place.

A. It was known as the Indian name.

Q. What's the English name.

A. They generally call it William Bob.

Q. You knew it also as the William Bob place.

A. I didn't know it at that time but that's where they lived.

Q. Do you know the location of Fred McDaniel's allotment joining the town of Bartlesville on the South, on the plat as the McDaniel's addition.

85 A. I'm not positive. I know the location but I can't swear that's the same one. I can't swear it by the numbers.

Q. What direction is the land in controversy from McDaniel's land.

A. South.

Q. Due South.

A. Yes sir.

Q. How far.

A. I guess about a quarter I guess or something like that.

Q. Do you know the contestant Annie Martin.

A. Yes I know her name, I can't say I know her personally but I just know her by the name.

Q. How long have you known her.

A. Ever since she was small; I was always acquainted with her: in 1879; she was drawing the first payment in my recollection.

Q. Did you see her then.

A. Yes sir.

Q. Did you know her father.

A. I knowed her father.

Q. What was his name.

A. His name was William Bob and the Indian name was Quepon-who.

Q. Do you know the contestant's mother; Annie Martin's mother.

A. No.

Q. Did you ever see her.

A. I don't recollect that I ever seen her at all; I might.

Q. What did you have to do with the enrollment of Annie Martin if anything.

A. You mean before the Daws Commission.

Q. Any time.

A. In the first place in 1879 this here William Bob or Wildbill they called him, he came there claiming "I got one child" and they said what is it boy or girl, and I asked him in my language and he said "Girl" and the agent wanted to know what's the name and Bob William Bob he gave the Indian name and the agent said no don't give me that name give me the English name, so it won't be lost and can't be found, after that William Bob turned round to me and said "I don't know what to call it" and the agent said what did he say and I told the agent that he didn't know what to call it.

Q. Did you name the child?

A. Yes sir I named it, I said I will call it Mary, the agent said what would you call it, I said Mary and I said Mary Bob, put it down that way.

Q. You enrolled her as Mary Bob.

A. Yes sir.

Q. Is she the same one that's married to George Martin.

A. That's what I understand.

Q. Do you remember the death of Wildbill.

A. She must have been about nine or ten years old when he died.

Q. Do you know where he died.

A. He died there, it must have been where her mother lived; I don't know of course.

Q. Where did Wildbill and his family live before he died.

A. Used to live with them folks; Mary Thursday.

Q. On the land in contest.

A. Yes right below there.

Q. Did Wildbill die there.

A. That's what I heard, I wasn't present.

Q. Do you know where he's buried.

A. Yes.

Q. Where is he buried.

A. Right there on the old land: Mary Thursday's land; that's what she told me; of course I don't know.

Q. Mr. Willy do you know the location of the place on which Wildbill and Mary Thursday lived.

A. Yes.

Q. What direction is it from Bartlesville.

A. Pretty near due south.

Q. How far.

A. About a mile and a half.

Q. How long did they live together there Wildbill and his family and their mother Mary Thursday.

A. I don't know; they lived there a good long while, until Bob, I guess he died there.

86 Did Wildbill live there till he died?

A. Yes.

Q. Do you know what improvement Wildbill or Wildbob had at that time where he lived?

A. No I can't say.

Q. Did you have anything to do with drawing the Delaware payments for this child that you named, the contestant in this case.

A. Me draw that money for her?

Q. Yes.

A. I didn't draw any money for her.

Q. State what you had to do with the Delaware payments.

A. I was interpreter for the agent a good long while.

Q. You were interpreter for the Indian Agent in 1889 and 1890.

A. Yes sir.

Q. Were there any payments made at that time, Delaware payments?

A. 1890.

Q. Yes.

A. There was in '91; in '90.

Q. That was what they call this six months payment that they made right after that; they got big money payments.

Q. Were there any Delaware payments made before that payment of 1890 and 1891.

A. Yes.

Q. When were they

A. They were made in the spring of 1890 and '91, in the fall of '91; in the fall I'm sure of that.

Q. Were there any payments before that time.

A. Yes.

Q. How many.

A. The '89 payment.

Q. Did Mary Thursday or Annie Bob now Annie Martin draw any Delaware payments at that time?

A. Yes.

Q. State the facts about that.

A. I'm not positive how much money they drew but I know Mary Thursday come there and drew the last money that was to be drawn for her son William Bob; they would draw one at a time; you know after they died she was the person drew that money for Annie Bob; Mary Bob they called her on the eighty roll.

Q. Is that the one that's known as Annie Martin the contestant in this case?

A. Yes sir.

Q. How do you know she drew those payments for her son William Bob deceased and for Annie Martin.

A. She had to sign it that way, Bob's name and hers before she could draw it.

Q. How many payments of money due the contestant did Mary Thursday draw to your knowledge.

A. Two or three to my knowledge.

Q. Were you interpreter for the Government at that time.

A. Yes sir.

Q. Did you see her sign the pay roll.

A. Yes sir.

Cross-examination.

Mr. Veasey:

Q. Mr. Willy what was the amount of those three payments which you say that Mary Thursday drew for Wildbill and Annie Martin.

A. It ranges from twenty-four dollars up to thirty dollars.

Q. Where were you living between 1889 and the year 1900.

A. I was living on Hogshooter. Where I live now.

Q. All that time.

A. Yes all that time.

Q. How far is that from the land which is in controversy in this case.

A. About eleven miles.

Q. Do you know old man Frenchman.

A. Yes.

Q. Do you know as a matter of fact that Wildbill and his wife and this contestant when she was a little girl lived at old man Frenchman's house from time to time.

A. I suppose they lived with his mother.

Q. How do you know that.

A. I say I suppose so; I don't know I paid no attention to where they was staying.

7 Q. You didn't pay any particular attention to where they lived did you?

A. No sir.

Redirect examination.

Mr. Magee:

Q. While you were living on Hogshooter were you familiar with the country round there.

A. Yes.

Q. And you were very familiar with all the Delawares in the tribe.

A. Yes.

Objected to as leading.

Mr. Butte:

Q. Had you ever visited Mary Thursday and William Bob at their home.

A. Down there yes below Bartlesville.

Q. That's close to the land in contest immediately south of Bartlesville.

A. I don't know just the situation of it.

Q. How far from Bartlesville.

A. Must be about a mile and a half.

Q. Did you visit them frequently there.

A. Well I've been there three or four times.

Q. That was before William Bob died.

A. Yes sir.

Q. Was William Bob's family there, his wife and children.

A. I can't say they was there but he was there himself I know.

Q. You don't remember about the family.

A. No I don't remember.

Mr. Veasey:

Q. You have assisted Mr. Magee and Mrs. Martin in getting witnesses for this case have you?

A. No sir.

Q. Weren't you with Mr. Magee several days ago when you and he called on Wallace Thursday to get him to testify in this case on behalf of Annie Martin.

A. When.

Q. Several days ago.

A. O we was down there and Wallace said the best man would give him more money. I will help him.

Q. How much did you agree to give him.

A. I didn't agree to give him anything.

Q. You didn't agree to give him six hundred dollars and twenty acres of land?

A. I didn't do it.

Q. Did Mr. Magee?

A. I don't know; I couldn't understand just what they said; I was standing out there and wasn't talking and I couldn't exactly understand what they said but I never offered him nothing; I just come down there to see the old lady.

Q. But you didn't hear whether Magee offered him any money or not.

A. No Magee never I didn't hear him.

Mr. Magee:

Q. Did I make any offer of any kind at any time to Mr. Thursday.

A. No.

Q. Was I not in your hearing at all times, right with you.

A. Yes.

Q. Did Mr. Wallace Thursday not ask me to give him six hundred dollars and he would testify for Annie Martin.

A. He said anybody that will give him more money, I will go with him.

Q. Did I not tell Mr. Thursday that time that I didn't come there to make any proposition of money of any kind.

88 A. I didn't hear it; no I didn't hear anything.

Q. But you did hear Mr. Thursday make me a proposition did you not that if I would give him six hundred dollars he would swear for Annie Martin.

A. Well he said the most money.

Q. Didn't you hear him say six hundred dollars?

A. No he said the most money.

Q. Did you hear him say that he demanded six hundred dollars from those people, from Annie Martin.

A. No I can't swear that but I heard him say the most money.

Mr. Veasey:

Q. The most money got him.

A. Yes that's what he said.

The Commissioner:

Q. Do you know anything about a Delaware payment made in 1893?

A. Yes.

Q. How much was paid to each Delaware then.

A. \$526.00.

Q. Did you act as official interpreter at that payment.

Q. Do you know how much money was paid to Mary Thursday at any at that time.

A. She just drew her own money and this \$526.00; they had to pay twenty-five dollars out on that and she had to pay twenty-five dollars, and left her \$501.00 and Frenchman drew that money.

Q. Frenchman drew the \$501.00 dollars for who.

A. This girl Mary Bob I call her.

Q. The contestant Mary Martin.

A. Yes.

Q. Do you know how much money Mary Thursday drew.

A. Yes sir the same amount for herself and the boy Sam Bob.

Q. You are positive that Frenchman drew the money for this contestant.

A. Yes.

WILLIAM FIELDS being first duly sworn testified as follows:

Examination by the Commissioner:

Q. State your name.

A. William Fields.

Q. In Cherokee Allotment contest No. 926 between Annie M. Martin and Wallace Thursday and Jesse L. Harnage there is in controversy the NE/4 SW/4 less 3.08 acres for K. O. C. & S. R. R. right of way and NW/4 SE/4 Section 13 Township 26 North Range 12 East; are you acquainted with that land.

A. Yes sir.

Mr. Magee:

Q. Do you know the contestant in this case Mrs. Martin.

A. Yes.

Q. Do you know Mr. Harnage the contestee over there.

A. I have seen him; I ain't acquainted with the gentleman.

Q. Do you know Wallace Thursday and Mary Thursday.

A. Yes sir.

Q. Were you at any time a tenant of Mary Thursday.

A. Yes sir.

Q. State when you were a tenant of Mary Thursday.

A. I can't tell the year but it has been eight years ago in March since I moved there.

Q. Since you moved on the land.

A. Yes sir, and I was there, it lacked from the 8th of November to the 1st of March of being there five years.

89 Q. Five years you were a tenant of Mary Thursday.

A. Yes sir.

Q. Did you farm the land in controversy here.

A. I farmed part of it.

Q. Did you farm the part North of there now claimed by Sam Bob.

A. Yes I had in about five acres of millet on there.

Q. And you first knew Thursday about 1899.

A. Yes sir.

Q. Did you have any conversation with Mary Thursday on or about 1899 with reference to the title of the allotment of this particular piece of ground, allotted to Annie Martin; if so state that conversation held with Mrs. Mary Thursday.

A. Not particularly; we have talked some about it; I don't know just when it was; later than that, probably a year or so afterward, while I was on the place.

Q. What did Mary Thursday tell you about that allotment; who was to have it, etc.

A. Well they said that the girl had to have some land.

Q. Annie Martin.

A. Yes.

Q. What did she say about getting it for her.

Objected to as leading.

Q. State what Mary Thursday said to you with reference to it.

A. She said she was aiming for her to have this piece of land.

Q. Said she was aiming for her to have this piece of land.

A. Yes sir.

Q. Did she say why she wanted her to have it.

A. No I don't know as she did particularly.

Q. Anything that you can recollect why she wanted this girl to have this land.

A. No I don't know as I could; I don't know as I can.

Q. Did you hold any conversation with Wallace Thursday with reference to this piece of land at any time during your tenancy.

A. One time; yes; he sold a piece of land there to Miller and he said I can't sell any more land; I've got to keep some for Lizzie.

Q. You mean the contestant.

A. Yes sir.

Q. Does she sometimes go under the name of Lizzie.

A. Yes.

Q. Was that conversation repeated to you more than once by each of those persons.

A. I have heard them talk about it several times but I can't just tell what was said.

Mr. Veasey: I want to move to strike all the testimony out re-

lating to those conversations on the ground that the same is irrelevant and immaterial and inadmissible and does not bind the contestee in any way.

The Commissioner:

Q. Was Mr. Harnage present at any of the conversations you have been relating?

A. No sir I didn't know the gentleman at that time.

Mr. Butte:

Q. I show you the Government traverse plat of section 13 township 26 north range 12 east showing the land in contest indicated by check marks; there is a small black mark in the southwest quarter of the northwest quarter of the southeast quarter of this section marked William Fields; is that your name.

A. Yes sir.

Q. Did you occupy a house on these premises at any time.

A. Not on this land you are talking about.

90 Mr. Veasey:

Q. Just South of it wasn't it.

A. Yes the line was about four feet right north of my barn.

Mr. Butte:

Q. Did any part of your enclosures extend north of your house.

A. It is north up to the south line of this eighty you are talking about.

Q. When was it you occupied this house.

A. From '98 pretty near five years.

Q. Did you cultivate any of the land to the north of your house.

A. Yes sir.

Q. How much.

A. There's about, well I can't say how much, I think there's about twenty-six or seven acres, that was in cultivation.

Q. At the time that you took possession of this place did Mary Thursday indicate to you what part of the place she expected to allot.

A. No sir she did not.

Q. Did she state anything as to the division of the place except that she expected to hold a portion of it for the contestant.

A. How was that.

Q. Did she state anything as to the division of the place in allotment except that she expected to hold one allotment for the contestant.

A. No I don't think she did.

Q. Did she tell you why she expected to hold this land for the contestant.

Objected to on the ground that it's irrelevant and immaterial and not in any sense binding upon the contestee.

A. She wanted her to have this land as one of the family is the way I understand it.

Q. Was there any other reason she gave; did she say anything as to any interest the father of the contestant William Bob had in this case.

A. No I don't know anything about that at all.

Cross-examination.

Mr. Veasey:

Q. At the time of this conversation you had with Mary Thursday was she not crazy and insane.

A. Well now I can't say.

Q. Wasn't her mind unsound at that time and so regarded.

A. It was like she had always been I suppose, like she had been for a long time, I suppose.

Q. Her mind was affected; was she not in the same condition that she is now.

A. Yes.

Mr. Magee:

Q. Mr. Fields do you consider her crazy now, crazy or otherwise.

A. Well I wouldn't think she was crazy.

Q. Mr. Fields do you know of your own knowledge who perform the household duties of Wallace Thursday at the present time.

A. Why she did, the most of the time, while I was there.

Q. Performs them like any other house wife I suppose.

A. Yes.

The Commissioner:

Q. You notice here on the south part of the land in controversy there's a house marked William Fields; do you live in that house?

A. On this land.

91 Q. Yes.

A. There's no house on it.

Q. You say this house that's marked here as located on the S. W./4 N. W./4 S. E./4 is not on that ten acres.

A. Where I live?

Q. Yes.

A. No sir it ain't.

Q. How far south of the land is that house.

A. I suppose seventy-five or eighty yards; I never measured it; there's a garden spot between the house and this line.

Q. Is that house still there?

A. It was when I left.

Q. When did you leave?

A. Three years ago the 8th of November.

Q. Did you live in that house five years?

A. From the 8th of November 'till the 4th of March.

Q. Whose tenant was you while there?

A. Wallace and his wife.

Q. Mary?

A. Yes sir.

Q. Paid rent to who?

A. Paid to them; hauled it down and put it in the crib?

Q. What improvements were on this land at that time, this eighty acres at that time?

A. Nothing but a fence.

Q. Any of it in cultivation?

A. Yes.

Q. How much?

A. There must be forty, maybe forty-five acres. There was about twenty-six or seven acres on the west side that I farmed and I farmed a little on the east side, probably four or five acres on there.

While you were in possession of that land did anyone else ever make a claim to it other than Mary and Wallace Thursday?

A. No.

Q. You never paid rent to anyone else but these two?

A. No.

Q. Have you seen the land since you moved away from it?

A. Yes a short time; some time between November and Spring I was back there once.

Q. During the time you tended this land under Wallace and Mary Thursday did you ever see the contestant over there Mary or Lizzie Martin?

A. Yes.

Q. Where was she living during that period?

A. She was living at three or four different places.

Q. Did she spend any time with Mary Thursday?

A. She was there once in a while.

Q. Did you ever hear Mary Thursday say anything about reserving land for the contestant to allot?

A. Yes as I told you a while ago she said something about it.

Q. Did you ever have any conversation with the contestant relative to this land?

A. No sir I never have.

Q. Do you know Mr. Harnage the contestee?

A. I know him when I see him; I never was acquainted with him; I just know the gentleman and that's all.

Q. Did he ever have anything to do with this land at the time you were on it as tenant?

A. I suppose all he ever had to do with it was putting some posts through it.

Q. Did he put posts on this land when you were on it as tenant?

A. Yes sir.

Q. Where were those posts placed?

A. Along the south line across the east line and along the north line.

Q. Of the land in controversy?

A. Yes sir.

Q. Do you know who he placed those posts there for?

A. No I don't.

Q. When were those posts placed on this land?

A. Three years ago. I think some time last May.

Q. Were you still on the land at that time?

A. Yes sir I was farming it.

Q. Did he place any wires on those posts?

A. No sir.

Q. How many posts did he place there?

A. I can't tell you.

Q. About how far apart were those posts?

A. About twenty-seven.

92 Q. What was the nature, were they good posts?

A. I never paid any attention to them, he got the posts at Wallace's.

Q. Did he use them inside or outside of the improvements that were already on the land.

A. Both sides.

Q. Did he make two rows of fence posts.

A. Yes sir; he didn't make two; there was one there and I set one and it would make two part of the way.

Q. How long did you remain on this land, after Harnage put those posts there.

A. Till November.

Q. During that time no wire was attached to them.

A. No sir.

Q. Is that the only claim to your knowledge that Mr. Harnage ever made to this land.

A. Yes sir.

Q. The only improvements he ever placed there.

A. That's all I know about.

Cross-examination:

Mr. Veasey:

Q. How much of the land in controversy did you farm in the year 1904 the last year you were there.

A. There was about half of this twenty-six or seven acres that I spoke of right north of the house.

Q. Who farmed the rest of the place that was farmed that year?

A. Tom Edwards me and him divided this place and each took half, he took the north and I took the south and he was farming the other end of it, I didn't have anything to do with it.

Q. To whom did you pay rent for the year 1904.

A. To Wallace Thursday.

Q. Do you know to whom Edwards paid his portion of the rent?

A. No I can't say.

Q. Is there some cultivated land west of the railroad.

A. Yes sir.

Q. Who farmed that the year 1904.

A. I farmed across the railroad, I think every year while I stayed there; I had forgot about that a while ago; that piece west of the railroad runs up—

Q. If you did farm it in the year 1904.

A. I paid it to Wallace, all the rent I have ever paid.

Q. Was it grain rent or cash rent.

A. Grain; I had that piece across the railroad in oats the first year I went there and I put it into wheat and I put it into corn

again, I farmed it three years, that's all I farmed it. I did not farm it the last year; I can't say.

Q. Did you farm it the last year.

Mr. Butte:

Q. On how many sides Mr. Fields were posts set without wire three years ago as you testified.

Mr. Veasey: We will concede we are not making any contention on the ground of posts.

Mr. Butte:

Q. Did you see the contestee Mr. Harnage put those posts there.

A. I seen him out there with them when they were setting those posts, he and Mr. Combs and Mr. Evans.

A. Who is Mr. Evans.

A. He lives at Bartlesville.

Q. Do you know what interest he had in placing posts around this land.

93 A. No sir.

Q. Did you hear him say.

A. No sir I didn't speak to them; they were running through my tater patch one evening and I went out to speak to them and they got over the gate and went to town and I didn't get to speak to them.

Q. Who is Mr. Combs.

A. The gentleman here today.

Q. What's his business.

A. He's in the oil business.

E. S. PENNINGTON being first duly sworn testified as follows:

Examination by the Commissioner:

Q. State your name.

A. E. S. Pennington.

Q. How old are you.

A. Thirty-five.

Q. What is your Post office.

A. Bartlesville.

Q. In Cherokee Allotment contest No. 926 entitled Annie M. Martin vs. Wallace Thursday and Jesse L. Harnage there is involved the N.E./4 S.W./4 less 3.08 acres for K. O. C. & S. R. R. right of way and N.W./4 S.E./4 Sec. 13 Township 26 Range 12. Are you acquainted with that land.

A. Yes sir.

Direct examination.

Mr. Magee:

Q. Mr. Pennington do you know of a row of posts being driven round this particular allotment in contest or any part of it.

A. Yes sir one end of it.

Q. Which end.

A. The south end.

Q. You mean the south end or the south side.

A. The south side.

Q. Who drove those posts.

A. I helped.

Q. Who else.

A. A man named Garrison.

Q. Who employed you to drive those posts.

A. Mr. Jin Gray and Mr. Preacher Evans.

Q. What's the business of Jin Gray and Preacher Evans if you know.

A. In the oil business at that time.

Q. What company did they represent if you know.

A. Delokee I believe.

Q. Who paid you for driving those posts round there.

A. Mr. Gray was supposed to; I don't — whether he ever paid me or not; Jim Gray.

Q. Did the contestee Mr. Harnage ever employ you to drive posts there.

A. No sir.

Q. Did you ever see him driving posts.

A. No sir.

Q. Do you know anything about Mr. Harnage or his claim driving those posts round there.

A. No sir I don't know who owned the land; I didn't know he had anything to do with it.

Q. Did Jim Gray or Mr. Evans tell you why they wanted the posts driven there.

Objected to as irrelevant and immaterial.

A. Yes sir.

Q. Why was it.

A. To hold an oil lease I think.

J. N. NUCKOLS being first duly sworn testified as follows:

Examination by the Commissioner:

94 Q. How old are you.

A. Fifty-three years old.

Q. What is your post office address?

A. Bartlesville.

Q. In Cherokee Allotment Contest No. 926 entitled Annie Martin vs. Wallace Thursday and Jesse L. Harnage there is in controversy the N.E./4 S.W./4 less 3.08 acres for the K. O. C. & S. R. right of way and N.W./4 S.E./4 of Section 13 Township 26 N. Range 12 East; are you acquainted with that land.

A. Yes sir.

Direct examination.

Mr. Butte:

Q. How long have you known the land.

A. I've known that land knew of it about ten years.

Q. Did you ever reside upon it or farm it.

A. Yes sir I farmed it this year.

Q. Whose tenant were you.

A. I rented the land from Wallace Thursday last January the 22nd day of January I think.

Q. Did you have any conversations with Mary Thursday the grandmother of the contestant or with Wallace Thursday with reference to the allotting of the land in contest.

A. All the conversation I had was with Wallace.

Q. What was said.

A. He told me what he did; he said I don't know whether I would get the rent off the land or not but I will see that you don't loose your rent; he said I don't know who will get the rent but I will see you don't loose the land; I had the contract with him and one from grandma too; he gave me a contract from another party too and also from him; that's Wallace's wife; so we had two contracts on two different pieces of land.

Q. Was any reference in your conversation made to the contestant Anna Martin.

A. It was my understanding all the time from Wallace that he was aiming for her to have that tract of land; that he had give her a bill of sale of his right and title for her allotment.

Q. When did he first tell you that they expected to hold this land for the contestant.

A. That was along in January when he told me about letting her have that tract of land; I moved off the place the 17th of May and that was along about the 21st we had the talk.

Q. That was in 1906 was it.

A. 1907, this year.

Q. Did he state why it had been their intention to reserve this eighty acres for Annie Martin.

Objected to on the grounds it's irrelevant and immaterial and does not bind the contestee.

A. He told me he had give her his right and title, to Annie Martin and told her if she would go through with it and put it through he would help her and do all he could to help her get the place; it looked like that George wasn't going to try to do anything to put it through; George Martin her husband; he said when he gave her the papers and told her to put it through that he would do what he could to help her; it looked like George wasn't going to try to do anything.

Q. Did you have any conversation with Mary Thursday or Wallace Thursday before the land was filed on by Annie Martin.

A. Never did.

GEORGE W. MARTIN being first duly sworn testified as follows:

Examination by the Commissioner:

Q. What is your name.

95 A. George W. Martin.

Q. Age.

A. Forty-one years old.

Q. Post office address.

A. Bartlesville.

Q. In Cherokee Allotment Contest No. 926 entitled Annie M. Martin Contestant vs. Wallace Thursday and Jesse L. Harnage Contestee there is in controversy the N. E./4 S. W./4 less 3.08 acres for K. O. C. & S. R. R. right of way and N. W./4 S. E./4 Section 13 Township 26 North Range 12 East are you acquainted with that land.

A. Yes sir.

Direct examination.

Mr. Butte:

Q. How long have you known the land Mr. Martin.

A. I've known it for ten years.

Q. Do you hear Mary Thursday or Wallace Thursday at any time make any disposition as to the improvements on this land.

Mr. Veasey: I want to object to the competency of the witness that is the husband of the contestant and I want to object to his competency as a witness on the ground that he is not competent under the statute to testify in behalf of his wife.

The testimony of the witness will be taken subject to a ruling hereafter made as to the relevancy of his evidence.

Q. State what was said.

A. At one time I went down to visit them and stayed two or three days.

Q. When was that.

A. I think that was in March in '98, in '99 and when we got ready to go home we was both in the wagon and my wife called us out to the fence and asked him if the old man was going to do anything for us and we told her he wasn't and he said if he ain't going to do anything for you we have got lots of land here and after we get our allotments then you can have your allotments and when he said that he said we have drawn the father's money and your money and we have lived here and you have got a right to your allotment here and if your father was living, William Bob he would get his allotment just the same.

Q. Who said that?

A. Wallace Thursday.

Q. What did Mary Thursday say.

A. She just could talk English enough so I could understand a few words she said; she said they had lots of land there and she was going to divide with her grandchildren after they got

their allotment; after they knew just where they was going to take theirs.

Q. Who did she mean by her grandchildren.

A. Sam Bob and Annie Martin.

Q. Did you and your wife after that time move on to the place.

A. Yes sir.

Q. What understanding if any did you have with Mary Thursday and Wallace Thursday.

A. I asked them if I could live there as one of them and we lived east of the house about one year on her place then we moved over there down to the house, the old house where they moved from upon the hill and we lived there about six months on the old lady's place.

Q. What understanding did you have with Mary Thursday and Wallace Thursday when you moved on the place, the last time relative to the land involved in this contest.

A. I met Wallace Thursday and Wallace Thursday saw me in town one day and come to me and told me to tell my wife Lizzie Martin to come down, that he wanted to see her on that land business and so I told him I would; that was about in November between the 19th and 21st he told me that.

96 Q. What year.

A. 1906; then I went and told my wife about it and I took care of the baby while she went down to Thursday's to see him about the place and she went down there and they had a talk over it that day and the next day Wallace Thursday came to our house and I was at town and he was there when I come home and they had a talk at that place and then he went back and the next day he come and then they had a talk; he said he wanted us to move down there; he wanted us to get it fixed up some way before we moved and he said he wanted us to move out of town and go to work and try to do something.

Q. Where did he want you to move.

A. I haven't got to that yet; he wanted us to move on the place and do something and I told him that's what we wanted to do as soon as we could get in and built and he told her and me that he wanted us to built right down by that willow tree right where we have got the house now close to where there was water and handy to water and so the next day he come up and me and my wife and him went down to Bartlesville and had a relinquishment drawn up before a notary public.

Q. Who signed it.

A. Wallace Thursday signed the papers.

Q. What was that paper.

A. That was a written contract.

Q. Where is that contract; that bill of sale.

A. Mr. Owens I believe filed it.

Q. Filed it with the Daws Commission.

A. I don't know whether its the Daws Commission or the Indian Agent.

Q. Who filed it.

85

A. Mr. Owens I believe.

Q. What Owens.

A. I can't tell you.

Q. Where did he file it.

A. I don't know.

Q. Did you ever pay any rents to the Thursdays during the time that you and your wife lived down on the place.

A. No sir.

Q. Why didn't you.

A. He told her that he had drawn her money and drew her father's money, William Bob and Annie Martin and we could have that for nothing, didn't charge a cent, that they wouldn't think about this land again and she accepted if they wouldn't charge her anything for it; and they said No they had drawn her money and her father's money and she was entitled to her allotment on that place.

The Commissioner:

Q. When were you married to Annie Martin?

A. November 1898.

Q. Where was she living then.

A. I was living ninety two miles and a half south of the fork of Caney.

Q. How far is that from this land in controversy.

A. About ten miles north of Bartlesville.

Q. Where was your wife living when you married her.

A. She was staying at John Young's.

Q. Who was John Young.

A. A Delaware Indian; she was just staying there a little while she stayed there and then she stayed down at the old man's a good deal of the time.

Q. After your marriage did you at any time move on this land?

A. Yes sir.

Q. That's the land in controversy.

A. Yes sir we moved on that land.

Q. When did you move there.

A. We moved there the 11th day of June.

Q. What year.

A. 1907.

Q. Had you ever been on this land or exercised any control over it prior to that time?

A. Yes sir.

Q. What did you do relative to exercising any control over this land.

A. I don't understand.

Q. You said you exercised control over this land before you moved on it; what did you do.

A. We had truck patches on it and that's about all.

Q. Who was renting the land.

A. Nuckols I believe was on it and Fields was another.

Q. Did your wife get any of the money for the rent of that land?

A. No sir.

Q. Who did get it.

A. Wallace Thursday.

Q. Did your wife claim to own this land before you moved on there in June 1907.

A. Yes sir.

Q. Did you have any arrangements with the Thursdays by which they were to get the money for the use of this land.

A. We was to get this land as soon as the allotment time came.

Q. What do you mean by allotment time.

A. That means after they take their allotment.

Q. After they got theirs.

A. Yes sir.

Q. Has Mary Thursday got her allotment.

A. Yes sir.

Q. Where is it.

A. South of this eighty.

Q. Immediately south.

A. Yes sir.

FOR THE CONTESTEE.

WALLACE THURSDAY being first duly sworn testified as follows:

Examination by the Commissioner.

Q. State your name age and post office address.

A. Wallace Thursday. Fifty-six years old. Bartlesville.

Q. In Cherokee Allotment Contest No. 926 entitled Annie M. Martin vs. Wallace Thursday and Jesse L. Harnage there is in controversy the NE/4 SW/4 less 3.08 acres for K. O. C. & S. R. R. right of way and NW/4 SE/4 Section 13 Township 26 Range 12. Are you acquainted with that land.

A. Yes sir.

Direct examination.

Mr. Veasey:

Q. Who made the original improvements on the allotment that you selected for Mary Thursday.

A. I made them myself.

Q. Do you know Wildbill or Bill Bob. You knew him during his life time.

A. Yes sir.

Q. You are acquainted with the contestant Annie Martin.

A. Yes I'm acquainted with her.

Q. Was Wildbill related in any way to Mary Thursday.

A. Yes he was her son.

Q. About when did she die.

A. About sixteen or seventeen years ago I think.

Q. Where did he die.

A. At my house; he died at my house.

Q. At the time of his death how many children did he leave.

A. He left one to my knowing and there was another one he claimed.

Q. Who was that other one.

A. Annie Martin.

98 Q. What do you mean by one you knew of and one that he claimed; what do you mean when you say that.

A. I know one of them was his children; that's what I knew.

Q. Which one was that.

A. Sam Bob.

Q. And how about the other one.

A. She was a great big girl when I first saw her; I can't tell anything about that.

Q. Were those children by the same woman.

A. Yes sir.

Q. Were the children at your house when Wildbill died.

A. Yes sir.

Q. What became of them.

A. He kept Sam Bob and they come and got Lizzie Bob; she was at our house two months or a month and a half; I will say two to justify in this.

The Commissioner: Nobody wants you to justify anything; we want you to testify what you know.

Mr. Veasey:

Q. Who came and got her.

A. Old man Frenchman.

Q. Did you give up the child willingly or did they take her against your will.

A. No sir they asked the father before they come if they should take her up there to see her sick brother and they would bring her back.

The Commissioner:

Q. Who asked that.

A. Mr. Frenchman, the old man's wife.

Mr. Veasey:

Q. Was she to live with the Frenchman's. Was it the understanding that she was to live with the Frenchman family.

A. There wasn't any understanding but Bill said after they wouldn't bring her back, said leave her there, I will tend to her and they let her stay there.

Q. That was before his death.

A. Yes sir.

Q. I mean after his death; after Bill Bob died.

A. That's wrong; that was before he died he said that; she was taken away before Bill died; after the woman died; then two months and a half or maybe one—I don't know but I will say two months to justify myself they come and got her and said I will take care of her; then they drew her money.

Q. That was after her mother died and before Bill Bob died.

A. Yes sir.

Q. Did she ever live at your house; Lizzie Martin, did she ever live at your house after the death of her father.

A. No sir.

Q. Do you know how long she stayed with Frenchman.

A. She must have stayed there twenty years or more.

Q. Had you married Mary Thursday or were you living with Mary Thursday when Wildbill died.

A. I was living with her at the time he died.

Q. How long have you been living with Mary Thursday.

A. About ten years I guess before I married.

Q. How long have you been living with her since you married.

A. Twenty-two years.

99 Q. Did you ever collect any Delaware payment moneys or Indian payment moneys belonging either to Wildbill or Lizzie Bob or Lizzie Martin the contestant.

A. Well Bill Bob drew one payment before he died, that I know of and Lizzie Bob—he paid it too for clothes and feed, had the store bill, that I know of and after that further, I don't know.

Q. Did you collect the payment moneys for Mary Thursday or did she collect them herself.

A. During that time I stayed with her she was the one that collected it.

Q. Did she do any of her own collecting after wild bill died.

A. No, sir.

Q. Did you do it for her.

A. Yes, sir.

Q. Was any part of the old Thursday farm or original improvements included with the eighty acres that's now in controversy.

A. No sir, it wasn't included.

Q. Did you make the improvements upon the land in controversy or did you purchase the same.

A. I bought it from Johnson and Keeler.

Q. When was that.

A. Well I can't tell you just exactly what year, it was fifteen years ago or sixteen.

Q. How much did you pay for the land that you bought from Johnson and Keeler at that time.

A. Eight hundred dollars.

Q. Whose money was that.

A. Sam Bob's and the old lady's together.

Q. Who do you mean by the old lady.

A. My wife Mary Thursday.

Q. Did you use any money belonging to Wildbill or to Lizzie Martin in either making or improving either of those places you have referred to, the one you bought or the one you made in the first place.

A. No, sir.

Objected to as leading.

A. When I made that place Mary Thursday's land where I ran

over, the crop what we didn't use ourselves I took the increase of the place.

Q. How many acres did you buy from Johnson and Keeler eleven or twelve years ago; how many acres were included in that place.

A. I've forgot just exactly what, two hundred and fifty or sixty acres.

Q. Was all of the land in controversy included within that purchase.

We object to the question as clearly leading.

A. This eighty what we are in controversy with now is in the same tract of land as that 250 acres that I bought that time.

Q. Did you ever select the land in controversy as your allotment in the Cherokee Nation.

A. Yes, sir.

Q. When.

A. About two years ago I guess.

Q. Where were you when you made the selection.

A. Down at Tahlequah.

Q. Did you at the same time select allotments for Mary Thursday and Sam Bob?

A. Yes, sir.

Q. What land did you select in allotment for Mary Thursday.

A. At the home place.

Q. What do you mean by the home place.

A. Where we live.

Q. Who did make the improvements upon the land that you selected for Mary Thursday.

100 A. I made them myself.

Q. What land did you select yourself.

A. On the north side.

Q. Was that the land in controversy in this case?

A. Yes, sir.

Q. What land did you select for Sam Bob.

A. On the north of where I selected.

Q. Who made the improvements upon the land that you selected upon the land in controversy and immediately north of there which was selected for Sam Bob.

A. At that time if a man bought a man's place out, it didn't include enough it was under fence, we included that, its just the same as we make it, that's the way the law was, a man bought another one out it didn't make any difference how big the fence was or how long it was.

Q. At the time you selected the land in controversy in allotment for yourself did you make any arrangement with any other citizen of the Cherokee Nation to also file upon it.

A. Yes sir, I did.

Q. Who was that.

A. Mr. Harnage provided I lost.

Q. State exactly the understanding which was had between you and Mr. Harnage when you selected this land as your allotment and when you permitted him to also file upon it.

A. He was to give me the best well on the land for the use of the land his lifetime.

Q. When was he to give that to you.

A. Just as soon as it was his'n and I couldn't hold it, then it fell to him.

Q. Was there a writing ever drawn by him exactly what the contract was between you and Mr. Harnage with respect to this land?

A. Yes sir.

Q. Have you that contract.

A. Yes, sir.

Q. You have it with you.

A. Yes, sir.

If the commissioner pleases this contract was in duplicate one copy was filed in the Heady Bob case and Wallace Thursday wants to retain this; I want to introduce in evidence.

Mr. Veasey: I will offer that in evidence and ask that I be read in evidence.

The Commissioner: It will be dictated in the record and considered as an Exhibit. As Contestees Exhibit A.

"This agreement made and entered into by and between Wallace Thursday of Bartlesville Indian Territory party of the first part and Jesse L. Harnage of Tahlequah Indian Territory, part- of the second part.

Witness-eth: That the part- of the first part hereby grants bargains and sells unto the party of the second part all the right title and interest which he, party of the first part has in and to the improvements erected and standing upon the following described lands in the Cherokee Indian Nation: The northeast quarter of the southwest quarter less 3.08 acres L. O. C. & S. R. R. right of way and the northwest quarter of the southeast quarter of section 13, T. 26, N. R. 12 E. containing 76. 92 acres more or less.

In consideration of which the party of the second part engages and agrees with the party of the first part as follows: That he the party of the second part shall select the land covered by the improvements as above described as his allotment in the Cherokee Nation.

101 That in the event Sam Bob the ward of the party of the first part shall lose his present allotment in the Cherokee Nation by the contest proceedings now pending

against him before the Commissioner to the Five Civilized Tribes in which Ella E. Heady is the party contestant, then the party of the second part shall relinquish without further consideration all such rights as he may have acquired in the land above described to said Sam Bob in order that he the said Sam Bob may select said land herein described as his allotment in the Cherokee Nation; that in the event the party of the first part shall finally establish his citizenship in the Cherokee Nation and in the event also that said Sam Bob shall prevail in contest proceedings now pending against his allotment that the party of the second part shall relinquish unto the party of the first part all such right as he may have acquired in the land herein described in order that the same may be selected in al-

lotment by the party of the first part; that in the event the said Sam Bob prevails in said contest case and in the event the party of the first part fails to establish his citizenship in the Cherokee Nation then the party of the second part shall grant to the party of the first part the use, rents and profits of the surface of the above described land as well as the royalty accruing to him the party of the second part and one of the best oil and gas producing wells thereon as may be at the time determined by the party of the first part said several grants to continue and endure for the life of the party of the first part only.

In witness whereof the parties have hereunto set their hands and seals this 21st day of June 1905.

(Signed)

WALLACE THURSDAY.

His mark

W. JESSE L. HARNAGE.

Witnesses:

J. A. VEASEY.

C. I. WEAVER.

Mr. Veasey:

Q. Who was in possession and obtaining the crops from the eighty acres that you filed on from the time you purchased it as you have testified until you filed on it.

A. I was.

Q. Did anyone else during that time obtain any crops or rents from the place.

A. No.

Q. Who was the renter on the land in controversy for the year 1904 the year you filed.

A. Fields and Nuckols.

Q. Did you get the crops that year.

A. Yes, one third.

Q. Do you remember who farmed the place for the year 1905, the land in controversy.

A. I can't count that way.

Q. That would be three years this season.

A. I've got the crops from it ever since I bought it from Johnson.

Q. That was in 1893.

A. Yes.

Q. No one else has ever got the crops from the place.

A. No.

Q. Is there a fence on the south of this land which separates the land from the Mary Thursday allotment on the south.

A. None but the old fence.

Q. To which place did that old fence belong the Mary Thursday place or the Johnson Keeler improvements.

A. To the Johnson Keeler improvements.

102 Q. In May 1904 when you made that agreement permitting Harnage to file on this land did Harnage put any improvements or do any work on the land himself.

A. Yes sir.

Q. What did he do.

A. He drove a row of posts plum across the edges.

Q. Where did he get the posts.

A. Got them from my house.

Q. Were you there when he was driving them.

A. I was at the house.

Q. Did you see him driving them.

A. No he come to my house; I knew he was driving them.

Q. Do you know George Martin.

A. Yes I've known him six years.

Q. And of course you knew Annie Martin or Lizzie Martin.

A. Yes.

Q. Have you ever told either of those persons that you were holding the land in controversy to be filed on by them when the time for allotment came.

A. No I didn't tell them any such a thing; there was plenty of open land at that time; they could look up the land themselves.

Q. Do you know whether they ever did have any land to file on themselves. Did they ever have any improvements which they intended to file on later.

A. No I don't know anything about them having improvements.

Q. What does Martin do.

A. I don't know what he does; I've seen him once in a while; I don't know what he does.

Q. What is the condition of Mary Thursday's mind at the present time.

Objected to as call for a conclusion and is rather embarrassing to him as to the condition of his wife's mind.

A. She's mindless; sometimes she's got a very fair mind and then again she hasn't.

Q. How long has she been in that condition.

A. About twenty years.

Mr. Veasey: At this point we want the application of Wallace Thursday selecting an allotment for Mary Thursday to be made part of the record showing he has been her legal guardian on the ground of her insanity.

Mr. Butte:

Q. Upon whose petition were you appointed guardian for your wife.

A. I was appointed by the agent of the United States.

We object to it for the reason that the petition itself is the best evidence.

A. And then I was appointed again by the commission, not this commission, the Commission at—

Q. Did you appear before the court at the time you were appointed guardian; who appointed you guardian.

A. Judge Lawrence.

Q. At what court.

A. Nowata.

Q. Did your wife appear before the court.

A. No sir.

Q. Why didn't she appear before the court.

A. If she had went she couldn't have understood anything by going.

103 Q. Is she hard of hearing.

A. Yes sir, she can't hear at all unless you get right up to her and holler.

Q. She's a very old woman.

A. Yes.

Q. How old is she.

A. She's about sixty years old I guess; I don't know exactly her age; she was an old woman when I married her.

Q. When were you appointed guardian for her.

We object as the record of the United States Court is the best evidence.

A. By the United States about three or four years ago.

Q. Who first suggested to you to be appointed guardian.

A. The Judge himself.

Q. What Judge.

A. I don't know whether it was Judge Lawrence or Judge Gill or Judge Gilluly, either one of them judges. I forget which one it was, I don't know which one it was, it was one of the three.

Q. Why did you have yourself appointed guardian.

Objected to on the grounds of immateriality.

A. I didn't ask for myself to be appointed.

Q. Who asked for you to be guardian.

A. I was asking for another man guardian.

Q. Who was it.

A. Owsley or Owl or some such name. V. L. Owl, the judge objected to it and said I was the proper man to be the guardian of my wife and didn't think it would be right to put some other man judge over another man's wife.

Q. Did you give a bond.

Objected to as the record is the best evidence.

A. No I didn't give a bond *by* the company gave a bond.

Q. What company was it.

A. The Delokee.

Q. Were you appointed at the instance of the Delokee Oil Company.

A. I was dealing with them.

Q. How much were you to get from Heady for the improvements upon the allotment of Sam Bob which you sold to Heady lying immediately north of the land in controversy.

Objected to as irrelevant and immaterial.

A. That's a question I can't answer.

Q. You were to get \$2700.00 were you not.

A. Yes I was to get it.

Q. What else were you to get.

A. Nothing else that I know of.

Q. Now what are you to get for the land involved in this contest in case its taken away from the sister of Sam Bob.

A. Well they had all the chances on earth to select her allotment.

Q. What are you to get.

A. Didn't you look at that paper what I was to get.

Q. What are you to get if anything besides what that contract recited.

A. I thought that would give good satisfaction, if a man has a life time and good well.

Q. How much money are you to get.

We object as the paper itself is evidence of its contents.

104 Q. How much money are you to get.

A. I'm not to get any money, I'm to get the lifetime and good well.

Q. Are you to receive any money from any other person or any other corporation besides Mr. Harnage; are you to receive any money from any corporation or other person than Mr. Harnage in the event you win this contest.

A. I am not to get a cent.

Q. Who is paying your expenses as a witness at this trial.

Mr. Veasey: We will concede that the Delokee Oil Company is paying it.

Mr. Magee:

Q. When was the first big Delokee payment.

A. I've forgot just what year it was.

Q. Do you know when Johnson and Keeler sold the improvements we are talking about to Mary Thursday.

A. Sixteen years ago.

Q. Along about 1903 was it.

A. I don't know how to count that.

Q. Did Mary Thursday draw that payment herself or did you draw it.

A. I drew it myself.

Q. How was it drawn; in cash or by certificate, a Government certificate with a receipt on it.

A. In a check.

Q. Was that check made payable to you or was it made payable to Mary Thursday.

A. I don't know how it was made, they gave it to me, I don't know how it was made.

Q. You don't know whether the check was made payable to you or Mary Thursday, the first Delokee payment.

A. It was made to Mary Thursday.

Q. What did you do with that check.

A. I went and bought land with it.

Q. Turned it over to Johnson and Keeler.

A. Yes sir.

Q. Did Mary Thursday owe Johnson and Keeler any money at this time.

A. Yes sir.

Q. Do you know how much.

A. No I don't know the amount of it; she got a team from them, a harness and wagon.

Q. Was that account run in Mary Thursday's name.

A. Yes sir.

Q. Then those checks were turned over to Johnson and Keeler to pay this account of Mary Thursday. Was there a balance left over after the account was paid.

A. Yes sir.

Q. What became of that balance.

A. That's what bought the land.

Q. When you stated a while ago that you paid for the improvements to Johnson and Keeler you meant to say that Mary Thursday paid for the improvements to Johnson and Keeler; isn't that true.

A. I meant that Mary Thursday paid for it; I was doing the work for Mary Thursday.

Q. Did Mary Thursday not draw this check from the Government in her name.

A. It was signed in her name.

Q. That was turned over to Keeler and Johnson.

A. It was turned over to me and I turned it over to them.

Q. Part of that money paid an account that you ran with Keeler and Johnson.

A. Yes.

Q. And the other part paid for the improvements.

105 A. Yes.

Q. Then when you stated a while ago that you paid for the improvements to Johnson and Keeler you did not mean that did you; you did not mean that you paid for it.

A. Well I told you once that my woman couldn't do such business as that.

Q. Was it your money or Mary Thursday's money you paid to Johnson and Keeler.

A. It was Mary Thursday's money but I paid it for her—Sam Bob I was guardian for him.

Q. Then Keeler and Johnson transferred these improvements to Mary Thursday.

A. Yes.

Q. You could not hold improvements at that time in the Cherokee Nation.

A. I was a citizen at that time.

Q. Have you ever been able to hold improvements in the Cherokee Nation at any time.

A. Before this allotment come up; I couldn't show as being a citizen.

Q. Are you a rejected white citizen.

The Commissioner:

Q. What did you claim citizenship as?

A. By law.

Q. As an intermarried Cherokee?

A. Yes sir or intermarried Delaware.

Q. In 1903 you did not hold in your name any improvements in the Cherokee Nation.

A. Well if I didn't hold it in my name it was all called in my name.

Q. The improvements in controversy was held by Mary Thursday.

Mr. Butte:

Q. Did you know William Bob in his life time.

A. He was about twelve years old when I had his mother. I ought to know him.

Q. Where did he die?

A. At my house.

Q. How long had he been living at that place before he died.

A. Where at my house?

Q. Yes at what you call your house.

A. I made it; I don't know how long; it was a couple of months, come there sick.

Q. Was that after his wife died, the mother of the contestant.

A. Yes sir.

Q. How long did she live there with his mother; the wife of William Bob the mother of Annie Martin, how long did she live at this place before she died.

A. She come there in March and died in June or the last of May I don't know which.

Q. What year was that?

A. I couldn't count the years.

Q. How many children did she have with her.

A. Had two.

Q. Who were they.

A. Sam Bob and Lizzie Martin.

Q. Where was William Bob's home at that time?

A. When he was there he was at home.

Q. The home of himself and family was with you at that time; they had their home with you at that time did they?

A. Yes sir.

Q. Didn't have any other place in the Cherokee Nation?

A. Well he had friends round and he lived round.

106 Q. Did he do any work on this place while he was there?

A. No sir.

Q. You supported him and his family.

A. Yes sir.

Q. Do you remember when Annie Martin was married?

A. I don't remember it.

Q. Do you remember when she and her husband came down to

see you about six or seven years ago or eight years ago when she came down to see her grandmother.

A. Yes sir.

Q. In 1899 just after she was married.

A. She had one child before she ever come there.

Q. Do you remember her coming there.

A. Yes sir.

Q. Was that the time that you had a conversation with her and her husband relative to her allotting the land in contest.

A. No sir.

Q. Was she at your place any other times after that.

A. Yes she was there lots of times after that.

Q. Didn't you make her a bill of sale last fall for the improvements on the land in this contest.

A. Yes sir, I did.

Q. Why did you do that.

A. Parties told me they didn't think he could stand up to his contract in law that we had made and got me to half way believe it and I thought he couldn't do it and Mrs. Martin could file on it and I studied the question over and I thought I would go and ask some lawyer and see how it stood and they said it would have to stand.

Q. What consideration did you receive for making this bill of sale to the contestant.

A. From whom.

Q. Annie Martin.

A. Haven't never got a thing.

Q. Isn't it a fact that you delivered her this bill of sale without consideration because you felt bound by your former promise that she should have this land in allotment.

A. Well I will say as I told you before if he couldn't stand up to the agreement and fulfill his contract why then if I lost it she could have it.

Q. And they didn't pay you anything for that bill for sale did she.

A. She didn't turn her hand over, didn't even tell me thank you; got the bill of sale and walked over; it wasn't a bill of sale; it was a contract; you can tell by looking at it it's nothing but a contract.

Q. When did you learn that you were mistaken in supposing that Mr. Harnage wouldn't make good his contract with you; when did you learn that you were misinformed about his failure to make his contract good with you.

A. I didn't state; I said the law maybe would be so that he couldn't fulfill his contract.

Q. What parties came to you and said the contract was no good.

A. Several parties.

Q. Who were they.

A. I don't know.

Q. Was it the Delokee Oil Company?

A. Yes I guess it was.

Redirect examination.

Mr. Veasey:

Q. Do you mean to say that the Delokee Oil Company came and told you the contract was no good.

A. No.

Q. Who were they.

A. Outside men.

107 Q. Did Mr. Owens who is present at this hearing come and tell you that.

A. Mr. Owens?

Q. Yes the gentleman there with the blond mustache.

A. No he didn't do it but I think somebody else did it.

Q. Who was it.

A. I can't just exactly tell who all it was.

Q. Do you know John Willy.

A. Yes.

Q. Do you know Mr. Magee.

A. I don't personally know him; I've seen him.

Q. Has he been down talking to you about this case lately?

A. He was down there Monday night or Tuesday night I forget which.

Q. Who was with him?

A. John Willy.

Q. What did he say about this case.

A. They didn't say a great deal about the case; they come down, wanted to know if I would help Annie Martin; I told them I had made a contract with Mr. Harnage before and I didn't see how I could make it and they talked about what they would give me.

Q. What did they say they would give you.

A. Well the first question was how much will you take, five hundred dollars and I told them no; that's what they wanted to give; I said I won't take it.

Mr. Magee:

Q. This is a conversation you had long prior to Monday night.

A. Yes.

Q. The conversation you had a year or more ago.

A. Yes.

Mr. Veasey:

Q. What are you talking about now, did it happen Monday night or before.

The Commissioner:

Q. Did this conversation you are relating happen Monday night or some time before last Monday night.

A. It was either last Monday night or Tuesday.

Q. What I want to know is exactly what occurred between Mr. Magee and Willy and yourself Monday or Tuesday night.

A. There was nothing done but there was proposing done how they wished for it to be.

Q. What was said about money if anything.

A. I told them I wouldn't take five hundred dollars and they said they would give me six hundred.

Q. What for.

A. To help the case.

Q. Would they give you anything else.

A. I told them to give me six hundred dollars in my hand and I could put that in my pocket.

Q. Did he give it to you.

A. No; after I put it up to six hundred dollars they said they would give me twenty acres of land; I told them I couldn't put that in my pocket.

Q. Who did most of the talking, Willy or Mr. Magee.

A. I don't know exactly; it was both of us talking.

Cross-examination.

Mr. Magee:

108 Q. Mr. Thursday without being a witness on the stand I will confess I was there, when I rode up there you and

Mr. Willy were talking were you not at the corn crib or some place, did not I state this to you, or rather did you not state this to me, they offered me five hundred dollars for this allotment and I wanted six; didn't you make that statement or not.

A. No sir I told you that they offered that much, they offered five hundred and I wanted six hundred.

Q. You told me that; you told me you had had that conversation.

A. Yes.

Q. I said this did I not; Suppose I would give you six hundred now what would you do, didn't I state that.

A. Yes.

Q. Now do you say I offered you the six hundred dollars or any sum whatever, any sum whatever last Monday night or any time for any consideration or any title.

A. Didn't you say you would give six hundred.

Q. That's what I'm asking you. I said suppose that I would give six hundred, didn't I, then what would you do.

A. No there wasn't any supposing at all.

Mr. Butte:

Q. You then have an interest in the outcome of this contest have you not.

A. Only the crop off the place is all.

Q. If the Delokey Oil and Gas Company or the contestee Mr. Harnage wins this contest you are testifying in his behalf are you not.

A. I suppose I am.

Q. If he wins this contest you get something don't you.

A. No sir.

Q. You get what your contract with him calls for don't you, or are supposed to or hope you will get it.

A. Well yes sir as I said at first.

Q. You therefore had an interest in Mr. Harnage winning this contest; have you not

A. Why of course I have because he's the man that's putting up what I can see.

The Commissioner:

Q. When did this contestant's mother die, Annie Martin's mother.

A. About 22 years ago or maybe a little more.

Q. Did she die before or after Wild Bill the contestant's father.

A. She died before.

Q. How long before.

A. It may have been two years or three or four, I don't just exactly know exactly how long.

Q. Where was that child the contestant from the time her mother died 'till her father died, Annie Martin.

A. Mr. Frenchman's.

Q. When did she go to Frenchman's.

A. It's been a long time either about the first of May or the last of March I can't tell just exactly how long.

Q. What year.

A. I can't tell you.

Q. How long after her mother had died did Frenchman get her.

A. Maybe two months or maybe a month and a half.

Q. Where was she when Frenchman got her?

A. At my house.

Q. Where was she when Frenchman got her.

A. She had another brother there that was sick at the time so they sent Frenchman's wife after her.

109 Q. What statement did Frenchman's wife make.

A. Said her brother was sick, Annie Martin's and he wanted to see her and they would take her up there and bring her back.

Q. Did they ever bring her back.

A. No sir.

Q. How long did she stay at Frenchman's.

A. Stayed there till she was married.

Q. Are you positive of that.

A. If she didn't stay there she didn't stay at my house.

Q. Do you know whether or not Annie Martin stayed at Frenchman's house till she was married.

A. No sir I can't tell because the last I saw her there was a picnic about twelve years ago and the next I heard she was married.

Q. Are you pretty well acquainted with Frenchman; do you know anything about his reasons for taking this girl.

A. Well that's the only reason I can tell; her brother was sick and they wanted her to come and see him.

Q. What was her brother's name.

A. Willie Gibson.

Q. Do you know of your own knowledge whether or not Willie Gibson was sick at that time.

A. No sir I don't.

Q. How far did the Frenchman's live from you.

A. About eight or nine miles.

Q. How long after this child was taken from your place did her father die.

A. It might have been three years or two years and a half.

Q. And how long prior to the time she was taken from your house had she come there to live.

A. Who?

Q. Wildbill.

A. Bill come there many times but he didn't have the girl with him.

Q. Wasn't he living there with you at the time the girl was taken by Frenchman.

A. No sir he was at Frenchman's.

Q. And the girl's mother was at your place.

A. Her mother was dead.

Q. Didn't you testify a while ago that she and the girl's father with the girl came there to your house a few months before the girl was taken by Frenchman.

A. If I did I misunderstood myself.

Q. How did the girl happen to be at your house.

A. They came down just before payment and was going with the mother to payment and she taken sick, his wife, Bill's wife.

Q. Bill was along was he.

A. Yes sir.

Q. Did his wife die there.

A. Yes sir.

Q. What became of Bill then.

A. He went back up to Frenchman's and he got sick and he couldn't stand it any longer and come back home.

Q. Were you any relation to this girl's mother.

A. No sir.

Q. Was your wife.

A. From her statement, I don't know that.

Q. When did this girl again if ever come to your house after Frenchman got her.

A. She wasn't back there till she was married; I don't know when.

Q. Did she come back to live there after she was married.

A. She come down there on a visit I guess; I don't know.

Q. How long did she stay there.

A. Two or three days I think.

Q. Did she ever live on this land before last June, the land in controversy here?

A. No sir.

110 Q. Did her husband.

—, —.

Q. Did they ever have any claim or any improvements on it.

A. No sir.

Q. This land in controversy, the Delaware segregation of Mary Thursday this land was bought from William Johnson wasn't it; the land was bought with money belonging to Mary Thursday.

A. They gave it in her name.

Q. But as a matter of fact that land was attempted to be sold to you wasn't it; it was sold to you and charged to your wife?

A. Yes sir that may be the case. I don't know.

Q. On the 21st day of June, 1905, you executed this agreement of sale purporting to transfer the land in controversy to Jesse L. Harnage in your own name didn't you.

A. Well I had filed her allotment.

Q. Then after filing her allotment did you claim the surplus as yours.

A. If I had got my citizen rights.

Q. You never had any citizen right.

A. It was just the family land anyway.

Q. You claimed this as your allotment pending your citizenship.

A. Yes sir.

Q. Did you ever sell or attempt to sell or dispose of this land as guardian of Mary Thursday in accordance with the provisions of law specified for the disposition of Delaware surplus.

A. Yes I sold forty acres.

Q. Of this eighty.

A. Not of that it was surplus.

Q. Is this the only attempted sale or transfer you ever made of this eighty acres that is evidenced in the agreement between yourself and Jesse L. Harnage, as of date June 21, 1905.

A. I didn't aim to sell the land; it was the improvements.

Q. Then you didn't claim the land when you entered into this agreement.

A. I claimed it at that time but afterwards the secretary made a ruling that a man couldn't hold the land but could sell his improvements the man went from here up to Bartlesville and I sold them.

Q. When was you knocked out, your citizenship, was it under this last decision of the Supreme Court, November 5, 1906, that you attempted to sell these improvements under the act of March 2, 1907, which permitted intermarried citizens to dispose of improvements on lands they held.

A. It might have been; I don't know; it was the decision from the secretary that a person could sell the improvements on the land he couldn't hold.

Q. Did you ever have any further agreement with Mr. Harnage subsequent to June 21, 1905.

A. I don't think I ever had any agreement, with him only then.

Mr. Butte:

Q. Don't you know whether you did or not.

A. I don't recollect having any other agreement only that agreement.

Mr. Magee: But you might have had.

Mr. Veasey:

Q. Can you read or write.

A. No sir.

Mr. Veasey: It appearing that Wallace Thursday selected the allotment of Mary Thursday as her husband rather than as legal guardian the request that said application and letters of guardianship attached thereto to be made part of the record is hereby withdrawn.

111 Mr. Butte:

Q. Where is your wife at the present time.

A. She was at home when I left.

Q. What is she doing there at home.

A. That's where she always lived.

Q. Is she attending to her household duties.

A. I've got another woman there for help.

Q. If your wife attending to the household duties.

A. No sir I tend to it myself the biggest part of it.

Q. Does she do any part of the household work.

A. I do the washing and round in the house myself.

Q. You do that because she's near ninety years of age and too feeble to do it, and you are big and strong and stout.

A. She's unhealthy and not able.

By agreement this case is adjourned until September 26, 1907, on which date, the same being called for trial, and appearances being entered as of September 25, 1907, the following proceedings are had:

JESSE L. HARNAGE being first duly sworn testified as follows:

Examination by the Commissioner:

Q. State your name age and residence.

A. Jesse L. Harnage, thirty, Tulsa.

Q. You are the contestee in Cherokee Allotment Contest No. 926.

A. Yes sir.

Q. You were present yesterday during the proceedings.

A. Yes.

Q. You heard the description of the land.

A. Yes sir.

Q. You are acquainted with that are you.

A. Yes sir.

Mr. Veasey:

Q. Mr. Harnage you may state to the Commissioner the circumstances under which you filed on the land in controversy.

A. Sometime about the—I filed in 1904. I believe the complaint shows that, two or three days before that time I met Mr. James A. Veasey in the hall between my office and his office in Tahlequah; he suggested to me that they had an allotment on which I could file

but stated to me that I would have to file on it under certain conditions; he also stated that he represented Sam Bob, Wallace Thursday and the oil people who were interested as security and he stated that I would have to file on the land subject to the rights of Sam Bob which had not yet been determined in the contest between — Heady which would be probably instituted. I don't know how soon that contest was instituted on the north eighty. That I would have to make satisfactory arrangements with Wallace Thursday with reference to getting possession and with reference to buying improvements; he stated at that time that he did not know the status of Wallace Thursday with reference to the improvements but that his citizenship had been denied by the commission and that the matter was pending. I took the matter under advisement and decided that I wouldn't take it; at that time Mr. Harned was there

and I believe Mr. Combs was there; I had no conversation
112 with either of them; Mr. Harned however went with me to Bartlesville and I went out to Wallace Thursday's house in company with Mr. Harned and Mr. Evans was along with us, who has been referred to here as Parson Evans and two or three other people; Mr. Evans went up to the gate and called Wallace out and introduced me to him and stated to him that Cuss Harnage with whom he had had some dealings was my uncle and that we came to see him to make some arrangements about filing on that allotment and that we would have to get some posts for him; Thursday remarked that if I was like my uncle it would be all right; said if you are like your uncle Cuss you are all right; I stated to Wallace Thursday that I wanted to buy the improvements and get possession of it before I would file on it and make such arrangements with him as was satisfactory; I told him; I expressed it this way: I will let you use the land as long as you want to and give you an interest in a good average producing well and I said we want the posts and he said all right help yourself; and Evans had spoken about the posts, and he commenced looking at the posts; after he agreed to it we got the posts most of them and sharpened most of them in front of the house on the wood pile with Wallace Thursday standing down watching us and we got a wagon and put something like three hundred or two hundred posts around the eighty, not around the general place but around this particular eighty, I then returned to Tahlequah and registered for filing at the land office; I suppose the Commission is familiar with the method of filing there at that time; before I started however Mr. Veasey had told me also that other parties were trying to file on the land, one in particular, Houston Morgan and said that one Dr. Ross had agreed to file on it but had gone back on him and Houston wouldn't consent to it and I went into the land office and according to the way the tickets were registered Houston Morgan's call was just ahead of me and I think it was two days I laid around the land office. I think almost two days before I was called, Mr. Morgan's name was called first but as it happened he had stepped out and the clerk called his name three times and he didn't respond and they called me, I think it was John Rossen filed me.

Q. Do you know as a matter of fact whether Thursday had already filed on the land before he made his trip to Bartlesville.

A. I'm quite positive he had.

Q. How many days before you filed was it before you made this trip to Bartlesville?

A. Two or three days; it took us a day and a half I think to make the trip and I came back and I think it was two days before I filed; there was quite a rush at the land office and there was a great list of names on the spindle; they always took from the bottom; I got back home in the evening from Bartlesville as I recollect it about noon.

Q. What transaction occurred between you and Wallace Thursday with respect to this land subsequent to your filing on it.

A. Just the agreement and conversation I had.

Q. Subsequent to your filing on it.

A. That's the contract or agreement that we had.

Q. Did you have any transaction with him with respect to this land after you filed on the same.

A. After we filed.

Mr. Butte: I object on the ground it's altogether immaterial, we object to all transactions that took place subsequent to the time this selection was made by the contestee on the ground that it's irrelevant and immaterial and not pertinent to any issue in this case.

A. Yes.

114 Q. State what those were.

A. Well afterward he gave me the bill of sale of the improvements, the possessory right as near as he could and I gave him back a five year annual lease.

Q. Were those transactions evidenced by writings.

A. They were.

Q. I will ask you to examine these instruments which I hand you and state whether or not those are the writings referred to.

A. Yes sir.

Mr. Veasey: I desire to offer this in evidence.

Said instruments will be introduced and referred to as contestee's Exhibit B and Exhibit C.

Mr. Veasey:

Q. Was there any correspondence between yourself and me referring to either of those contracts which I have just introduced in evidence.

A. There was.

Q. Did you preserve any copies of letters.

A. Yes I have preserved all those copies, in fact I think I must have received two or three letters from you in which you stated that Wallace had been in to see you and you finally sent a reply to my letter, you sent me a contract and in my reply—I have that letter in reply to that letter.

Q. What do you mean by the contract.

A. The bill of sale that Wallace gave me or contract you have just introduced in evidence.

Q. You have the letter you wrote in reply.

A. A copy of the letter, not the letter.

I desire to offer in evidence the copy of the letter.

Said copy will be received and marked Contestee's Exhibit D.

Q. Was any attempt made to secure order of court either confirming that bill of sale or authorizing a bill of sale to be executed covering that land.

A. Yes sir.

Q. Where was that done.

A. That was done at Nowata.

Mr. Veasey:

Contestee offers in evidence certified copies of orders of Court at Nowata on 21st day of June 1905 in case of the guardianship of Mary Thursday an insane person and in case of the guardianship of Sam Bob a minor in which Wallace Thursday as guardian was authorized to sell the improvements upon the land in controversy to the contestee in conformity with the law at that time respecting the sale of the surplus lands of Delaware Cherokee citizens.

Said instruments will be received in evidence and considered as part of the record herein and marked contestee's Exhibit E and Contestee's Exhibit F.

Contestee offers in evidence a notice dated at Tahlequah July 3, 1905 to Jesse L. Harnage Annie M. Martin and Wallace Thursday notifying said parties that on July 26, 1905, that they should appear before the Cherokee land office and show cause why the land described in said notice being the land in controversy should not be certified as the Delaware surplus holdings of Samuel Bob and Mary Thursday.

114 We also desire to offer in evidence a letter under date of July 25, 1905 from Tams Bixby Commissioner, to the chief clerk of the Cherokee land office directing that the certificate of said land as the improved Delaware surplus of Mary Thursday and Sam Bob be held up until such time as the Heady Bob Cherokee Allotment Contest case 830 should be decided by the Commissioner of Indian Affairs, and contestee also introduces in evidence a letter under date of July 23, 1905 addressed to the Commissioner of Indian Affairs and reply by Veasey & Rowland wherein inquiry is made respecting the petition of Wallace Thursday as guardian of Sam Bob and Mary Thursday as to the status of said petition and contestee further asks that the petition of Wallace Thursday as guardian of Mary Thursday and Sam Bob for the certificate of the land in controversy as the surplus lands of the said Mary Thursday and said Samuel Bob be made a part of the record in this case the same now being in the files of the Commissioner to the Five Civilized Tribes.

The Commissioner:

The instruments referred to by contestees attorney will be con-

sidered as part of the record herein marked Contestee's Exhibit G. and will be found in Delaware jacket 108 marked Mary Thursday and Samuel Bob.

The petition referred to by contestee's attorney as filed by Wallace Thursday to have designated the land in controversy as Delaware surplus of Mary Thursday cannot be located at this time but will be found and referred to in the rendition of the decision in this case, the offering of said petition *of the decision in this case, the offering of said petition* being objected to by contestant's attorney unless he has the opportunity of examining, if located contestant's attorney will be given privilege of an examination of said petition and offering any further objection thereto that he may see fit.

Mr. Veasey:

Contestees ask that the endorsement on Delaware jacket No. 108 Mary Thursday and Samuel Bob, be read in the record and considered in the determination of this cause.

The notation referred to by contestee's attorney on the outside of Delaware jacket No. 108 styled Mary Thursday and Samuel Bob reads "Petition to designate under act of March 3, 1905, held pending decision in Cherokee Allotment Contest No. 830 Heady vs. Bob."

Mr. Veasey:

Q. Were you present yesterday when Wallace Thursday testified with respect to a written contract entered into between you and him.

A. Yes sir.

Q. At what time was that contract made with respect to the obtaining of the orders of court which you introduced in evidence.

Mr. Butte:

We object to the question for the reason that both are filed and both can speak for themselves; they are the best evidence of the date of the execution.

A. That contract was executed at Nowata at the same time Mr.

Veasey was there securing the orders of court the dates of
115 which appear upon the contract and upon the orders of court.

Q. What was the reason for the execution of that contract at that time.

A. At that time we did not exactly know the status of Wallace Thursday with reference to those improvements and it was necessary that I should carry out the original contract with Wallace Thursday; I had previously agreed to certain things which were embodied in this contract.

Q. Do you know anything about the contestant's taking possession of the lands in controversy in May or June of this year.

A. I do.

Q. Was any attempt made by you to oust her from that possession.

A. There was.

Q. What was done.

A. Filed suit of forcible entry and unlawful detainer, in the United

States Court at Bartlesville pending the determination of the rights in this case.

Q. Were any other proceedings instituted.

A. Yes we instituted proceedings on the criminal side of the court before the commission for trespass and Martin was arrested.

Q. What Martin.

A. George Martin the husband of the Contestant in this case.

Q. Is there any further statement you desire to make in regard to the case.

A. I dont know that there is at this time.

Cross examination by Mr. Butte:

Q. What was the result of the criminal action which you brought against the contestant and her husband.

A. At the time the matter was called up I wasn't there and I dont know exactly; I wasn't notified of the hearing.

Q. Didn't you know as a matter of fact that it was dismissed.

A. I did not.

Q. And they were released.

A. I did not know as a matter of fact; I have heard that was the result.

Q. It's a fact isn't — Mr. Harnage that those civil and criminal action against the contestant and her husband were brought by you before the trial of this contest weren't they.

A. Yes sir; at that time however we expected to get a speedy trial in the contest, simply wanted to keep them out and preserve matters in statu quo until this was heard.

Q. Your idea in obtaining those actions was to be placed in possession yourself was it not.

A. No sir it was not; it was to preserve the right of possession, I was already in possession through my tenant Wallace Thursday with this five year agricultural lease.

Q. It's a fact isn't — Mr. Harnage that those civil and criminal actions were brought at the instigation of other parties in interest.

A. No sir not absolutely to my judgment.

Q. And not for the purpose of protection any real rights that you had to the land in contest.

A. Not at all; the matter was simply left to my judgment; I instituted them on my own responsibility.

Q. Did you not as a matter of fact bring these false actions against the contestant and her husband for the purpose of intimidating them or in some manner deterring them from vigorously prosecuting this contest.

A. No sir.

Q. Did you sign or make affidavit to either of the instruments which initiated the civil or the criminal action against these parties.

A. Yes sir that was absolutely necessary that I should sign
116 the complaint in Bartlesville.

Q. Did you sign the complaint.

A. I did.

Q. Who swore to it.

A. I think it was sworn to, I dont remember whether before the notary public or before the clerk.

Q. Who signed the affidavit.

A. I don't recollect that either; the affidavit itself will show.

Q. Do you know as a matter of fact that Mr. Harned of whom you have testified made the affidavit to the criminal action.

A. I signed one myself; he may have signed one; I dont know anything about it but I prepared one myself in Bartlesville and then I am quite sure I verified before the United States Clerk.

Q. Who signed and swore to the warrant made before the United States Commissioner upon which you say the husband of contestant was arrested.

A. I signed one; I don't know how many more were signed.

Q. Were there any more signed.

A. Not that I know of; not of my own personal knowledge.

Q. Did you bring both actions at the same time.

A. I instituted both actions at the same time; you must remember there is no commission and I simply prepared the complaint and mailed it to Gilluly at Nowata.

Q. Do you mean to say there is no commissioner at Bartlesville.

A. I mean to say he dont live there.

Q. When did you bring this action.

A. Some time in May of this year; I was notified they were out there building a house.

Q. Who notified you.

A. Mr. Rowland notified me they were building the house and if I wanted to do anything I better come up here and see about it.

Q. To refresh your memory Mr. Harnage if you know isn't it a fact that Fred Keeler swore out the warrant for the arrest of these parties.

A. Well sir I swore to one complaint for trespass and mailed it to Gilluly; if Fred Keeler swore to anything I wont say he did or didn't because I wasn't there; I left on the morning train and I came back on the evening train and I prepared the complaint for trespass and mailed it to Gilluly in that time.

Q. Did you start any other criminal actions against these parties besides these you have testified.

A. I did not.

Q. You are a practicing attorney at law are you not.

A. Yes sir.

Q. You resided at Tahlequah during the time the Cherokee Land office was located there.

A. Yes sir something like thirty or forty days, I got there December 3rd and the land office was taken away January 4th.

Q. You have had extended experience in Cherokee Allotment matters and in land litigation haven't you?

A. Yes sir.

Q. It has been conceded by your council presumably with advice from you that you do not claim any right to select the land in contest superior to that of the contestant on the ground of the posts which you drove around the eighty acres.

A. I think that's true.

Q. As a matter of fact you do not claim anything on this ground do you.

A. Well that question I cant answer without some explanation; at the time the posts were placed there it was the general opinion that posts upon land constituted an improvement and the reason for my placing some improvements on the land, outside of Wallace Thursday's interest was to put some actual improvements of my own on the land and since that time the Department has held in some cases that posts are not improvements.

Q. It is a fact is it not that at the time you put the posts around the land a portion of it was in cultivation and fenced and there was a house on the allotment and the land in contest was within a larger enclosure.

A. Yes sir.

Q. Now it is a fact is it not Mr. Harnage that you based your hope of winning the land in contest upon the ground that the improvements located thereon belonged to a person who was not a recognized citizen of the Cherokee Nation is it not.

A. No sir.

Q. Upon what did you base your hope of winning the land in contest when you selected it.

Mr. Veasey: We object to the question on the ground that it calls for a legal conclusion, the witness can testify the facts and conclusion will be drawn by tribunals.

Mr. Butte: The question is waived.

Q. Did you at the time you selected the land in contest know that it had been selected prior thereto by Wallace Thursday as a portion of his allotment.

A. I had been so informed.

Q. By whom.

A. By attorneys; in fact I saw Wallace Thursday in Tahlequah when he was down there to make his filing.

Q. Did you have any agreement as you recall it now with Wallace Thursday respecting your right to select the land in contest and the improvements located thereon. In other words did you have his consent to select the land in contest.

A. I had his consent and he put me in possession of the property and in the conversation that I have just given in my testimony we agreed substantially to the transfer and sale of the improvement as was substantially reduced to writing which is evidenced by the contracts in evidence.

Q. If that be the case Mr. Harnage why did you make affidavit before Samuel Foreman on the 13th day of May, 1904, in your application to select the land in contest after testifying as to the improvements in answer to the question "Who is the owner of these improvements" you replied "Wallace Thursday is the owner of the improvements" above stated; I have placed a line of posts about sixteen feet apart surrounding the eighty acres" and in answer to the question "Have you obtained permission of Wallace Thursday to select

the land on which his improvements are located" you answered "No he is not a citizen of the Cherokee Nation."

A. At that time I had obtained the permission of Wallace Thursday to file and why I answered "No" is hard to understand; with reference to the reply that Wallace Thursday owned the improvements it may have been that I understood the question to be that he claimed the improvements; very frequently in making those applications a person is likely to omit something or say something that they don't really understand the nature of the question.

Q. Mr. Harnage at whose instance were the orders of court obtained which have been introduced in evidence authorizing Wallace Thursday the guardian of the person and estate of Mary Thursday to sell the improvements upon the land in contest.

A. I suggested it myself to Mr. Veasey that we take that step since the improvements ostensibly belonged to Mary Thursday and Sam Bob; at that time we didn't know exactly what turn the question as to the rights of Wallace Thursday to these improvements would take; it had been the practice and it had come up in my own experience that intermarried citizens would file on allotments the improvements upon which belonged to their wives and claim them but in order to further comply with what we considered to be the law and regulation governing those cases we attempted to have it segregated as Delaware surplus.

Q. You knew at that time that Mr. Veasey was representing the Delokey Oil and Gas Company.

A. Yes sir.

Q. Had you yourself Mr. Harnage made any contract with the Delokey Oil and Gas Company with reference to the land in contest.

A. At which time.

Q. At that time you selected the land in contest.

A. Only orally; I said I would give them a lease on it.

Q. To whom did you make that.

A. Well I think I made the statement to Mr. Veasey and I think I made it to Mr. Harned, I'm not sure but what the statement was made to Mr. Combs, although I'm not positive of it.

Q. Do you know who paid the expenses for procuring the above mentioned orders of Court.

A. I do not.

Q. You didn't pay them yourself did you?

A. No sir.

Q. As a matter of fact Mr. Harnage there was never a sale had in the manner provided by the statute and in conformity with the orders of court referred to of the improvements recited in the order of court was there.

A. No sir for the reason that the application to comply with that order and have the improvements designated was denied by the Commission.

Q. Do you know who was representing and assisting Wallace Thursday in the execution and delivery of the bills of sales and contracts and court orders which you have submitted in evidence.

A. Well Mr. Veasey was the attorney at Bartlesville and so far as the bill of sale is concerned I don't know—

Q. Examine the signature to the bill of sale, Wallace Thursday guardian and state whose hand writing that is if you know.

A. I'm not an expert.

Q. State whether you know.

A. I don't know.

Mr. Veasey conceded that the bill of sale submitted in evidence introduced as Contestee's Exhibit B was signed by him for Wallace Thursday as follows "Wallace Thursday guardian, his mark."

Q. Mr. Harnage in the bill of sale or contract marked contestee's Exhibit B Wallace Thursday guardian of the person and estate of Sam Bob the minor and Mary Thursday a person of unsound mind Bartlesville Indian Territory it purports to convey to you the improvements located upon the land in contest for the consideration of \$250.00 to him in hand paid and receipt of which he acknowledged in the bill of sale; who paid him this money.

A. The two hundred and fifty dollars was the accrued valuation placed upon the improvements and this consideration of \$250.00 was represented by the execution and delivery of a five years' agricultural lease; we thought at that time that would approximately be near the price that might be placed on the land by the agent in case it should be scheduled as Delaware surplus.

Q. Did he receive any other consideration besides a five year agricultural lease executed to him as you testified.

A. No sir.

Mr. Veasey:

Q. Mr. Harnage you stated that the commission refused to certify these lands as the surplus holdings of Mary Thursday and Sam Bob; do you know as a matter of fact that they did refuse.

A. Yes sir I have seen the letter of denial either here or at your office, something like that.

Q. Refresh your memory upon the proposition, didn't they simply decline to take any action.

A. That might have been what they did; it's a matter I didn't handle it as attorney and my recollection is that they held the matter up pending the decision of the Sam Bob case and refused to take action until that case was settled. It wasn't strictly a denial of the application; it was held up pending the controversy.

Contestee asks that the letter from Veasey and Rowland under date of July 22 1905 asking that the lands in controversy be conditionally certified as the surplus holdings of Mary Thursday and Sam Bob which letter or a copy thereof is a part of the record in the case of Heady vs. Bob, be referred to and made part of the record in the consideration of this case.

The letter referred to by contestee's attorney to be made part of the record herein will be considered if located as contestee's

Exhibit and contestant's attorney will have the privilege of examining said letter and offering any objection to the introduction of the same if he sees fit.

Mr. Veasey:

The contestee desires the bill of sale under date of July 23 1893 executed by Johnson & Keller to Mary Thursday and Sam Bob conveying to them the land in controversy which bill of sale is part of the record in Cherokee Allotment Contest No. 830 Heady vs. Bob be made a part of the record in this case.

The Commissioner:

Q. Mr. Harnage did you claim to be entitled to this property by reason of purchasing the possessory right from Wallace Thursday as guardian of Mary Thursday or do you claim it as having been filed on as public domain of the Cherokee Nation.

A. Well I claim the right to this allotment by reason of every fact or conclusion of law that can be drawn from the facts as brought out in this case; at the time that I filed I took such precaution as under the law we were required to take in placing some improvements on the land; it had been a rule in the land office that parties were sometimes refused permission to file a contest if they had no improvements on the land and to save ourselves that and give us whatever right on the land we were entitled to we placed the improvements on there and bought the possessory right of Wallace Thursday as guardian of Mary Thursday and Sam Bob and got whatever rights we could under the law at that time and as to the status of my claim at that time, that's it, I claim it under whatever rights that would entitle us——

120 Q. Have you ever been in possession of this land.

A. I have been in possession ever since before I had it.

Q. What did that possession consist of.

A. While I was up there as I stated before I made my agreement with Thursday and subsequently I carried that out and made him this five year agricultural lease; he has been my tenant ever since.

Q. I believe you stated on cross examination that you or somebody on your behalf had instituted a suit against the Martins to dispossess them or for trespass on this land.

A. Yes sir something to that effect; not exactly to dispossess them; they taken forcible possession of the land; as I understood the object of the forcible entry and detainer when a man comes on your premises——

Q. It wasn't an ejectment proceeding?

A. No sir it wasn't brought an action to throw them out from getting in on this place basing my claim on the fact that I was in possession and the owner of the improvements; that suit is pending yet. At the time we instituted the suit I thought we were going to get a hearing on this at an early date and that by getting this action we would protect my rights in the premises pending this suit; but this has been delayed.

Mr. Butte:

Q. You say you went into the land office prepared to file a contest at the time you selected the land in dispute at this time.

A. I went in the land office prepared to file on the land and that necessarily involved a contest because Wallace Thursday had selected it pending his citizenship.

Q. Why did you not file a contest.

A. There was a complaint somewhere; at least I made it before Mr. Davidson the law clerk; I remember at the time the question came up as to what we should base our claim on.

Q. Mr. Harnage the complaint which you filed when you instituted this contest against Wallace Thursday was signed by you the same day that your affidavit on the back of your filing papers was signed was it not.

A. Yes sir.

Q. You state in your complaint as one of the ground- of your contest "that the said Wallace Thursday is not a citizen of the Cherokee Nation nor never has been; that he is not entitled to the land on which he has filed in the Cherokee Nation nor to take any allotment of land in the Cherokee Nation." It is a fact isn't it Mr. Harnage that this contest instituted by you was perhaps the last contest which the commission permitted to be instituted on such a ground.

A. Yes I think it's one among the last.

Q. You also state and it is a matter of record that Wallace Thursday selected the land in contest on the 4th day of May 1904 or just nine days prior to the time that you instituted this contest; did you see Wallace Thursday at the time he was at Tablequah to make this selection for himself.

A. I saw him on the streets I didn't talk to him.

Q. At the time you filed this contest against Wallace Thursday did you have any difficulty in securing the permission of the Commission to file the contest.

A. Yes sir we had to change; as the boy says we had to back off and come again.

Q. State what the difficulty was.

A. We first tried to set up in our complaint the right of owning the improvements for having placed the improvements on it and the question came up about Wallace Thursday's right and Mr. Davidson who is now master in chancery and was law clerk at that time, and it was under his suggestion that we changed
121 the complaint to the present reading; and we would have to recognize Wallace Thursday's claim to the improvements and that was my recollection of it; of course that was the reason I answered this question here that you called attention to a moment ago, as soon as it appeared to the filing clerk that there would be a contest the matter was referred to the contest clerk up stairs and the whole matter threshed out up there.

Q. So they would not permit you to institute contest solely on the ground of your claim to the improvements because their records showed that Wallace Thursday had improvements there.

A. Something to that effect; because their records showed that Wallace Thursday claimed the improvements and the law clerk further stated that like all complaints the facts could be developed and investigated; that the complaint simply stated it.

FRANK FRENCHMAN being first duly sworn testified through James C. Webber a duly sworn interpreter as follows:

The Commissioner:

Q. State your name?

A. Frank Frenchman.

Q. How old are you?

A. I don't know my exact age but I think it's probably in the neighborhood of a hundred years old.

Q. What is your post office address.

A. Copan Indian Territory.

Q. In Cherokee Allotment Contest No. 926 entitled Annie M. Martin vs. Wallace Thursday and Jesse L. Harnage there is in controversy the N. E./4 S. W./4 less 3.08 acres for K. O. C. & S. R. R. right of way and N. W./4 S. E./4 Section 13 Township 26 North Range 12 East; are you acquainted with the land.

A. I understand about the contest between Mr. Harnage and Lizzie Martin.

Q. Are you acquainted with the land in controversy, the NE/4 SW/4 less 3.08 acres for the railway right of way and NW/4 SE/4 Section 13 Township 26 Range 12.

A. I don't understand exact land, I am not familiar with it except I know it's near the residence of Wallace Thursday.

Q. Are you acquainted with Annie Martin and Jesse Harnage.

A. I know Annie Martin but I don't know Jesse Harnage.

Mr. Veasey:

Q. How long have you known Annie Martin.

A. I have known Annie Martin from an infant.

Q. Did you know Annie Martin's father.

A. Yes I knew him.

Q. Who was her father.

A. Her father was Wildbill, I believe, that's the way it was given.

Q. Is Wildbill living now.

A. Her father is dead and her mother is also dead; the mother died first while the child was yet small.

Q. About how many years ago was it that the mother of Annie Martin died.

A. I don't know just the number of years the mother has been dead; my best recollection is she was probably about three years old.

Q. Annie Martin was about three years old?

A. Yes, sir.

Q. How long did you know Wildbill before his death.

A. I have known Wildbill from the time he was a very good sized boy probably about seven years old up until his death.

122 Q. Do you know Mary Thursday now the wife of Wallace Thursday.

A. Yes I have know her many years.

Q. Did you know Mary Thursday in Kansas before the Delawares came to the Indian Territory.

A. Yes I have known her while we were both children in Kansas.

Q. Was Wildbill born in Kansas or in the Indian Territory.

A. Yes he was born in Kansas.

Q. Did you know the mother of Annie Martin.

A. We raised the mother of Annie Martin from about the age of four years till she was grown.

Q. Did Wildbill ever stay at your house.

A. Yes sir Wildbill made his home right frequently with me.

Q. That was before the birth of Annie Martin?

A. It was after the birth of Annie Martin that Bill came to stay there.

Q. Where did the mother of Annie Martin stay together with the child Annie Martin from the time of her birth until the death of the mother of Annie Martin.

A. The mother stayed, made her home with me up until after the birth of Annie Martin, then they made their home at Wallace Thursday's.

Q. Where did the mother of Annie Martin die.

A. She died at Wallace Thursday's.

Q. Upon the death of the mother of Annie Martin what became of Annie Martin herself.

A. Annie Martin stayed at Wallace Thursday's for I don't know just exactly; quite a while, and there was a lady, I don't recollect her name, there was a lady that I got to go and get the girl and the girl then was brought to my place.

Q. About how old was Annie Martin when she was brought to your place.

A. I don't know her exact age but it didn't seem to me very long, probably between three and four years old I think.

Q. When she was first brought to your house had Wildbill died.

A. I don't recollect whether it was before or after.

Q. How long did Annie Martni continue to live with you from the time she was brought there as you state.

A. I don't recollect the number of years but she stayed there from the time she was brought to my place until she was a grown girl and married.

Q. Why did you take Annie Martin to live with you.

A. I taken charge of the girl because I had raised the mother and I felt like it was taking a relative to raise.

Q. Did you collect the principle payment moneys of Annie Martin.

A. I didn't draw the first annuities but I did draw some annuities afterward.

Q. Did you draw the two five hundred dollar payments of 1891 and 1892 or three.

A. Yes sir I drew the two payments.

Q. What did you do with the money Mr. Frenchman.

A. I used the money for the purpose of supporting Annie Martin and her brother and used it for myself also, a portion of it for buying grub and such as that and clothing.

Q. Did you have any land segregated and placed in the Delaware segregation.

A. No sir I never set aside any segregation.

Q. Did you have any land which you wanted Annie Martin to file on.

A. There was a prairie place and when I bought the improvements and suggested that the girl take her allotment there but I told John Young to speak to the girl about it; I didn't go directly to her but I had John Young to speak to the girl about it; I didn't go directly to her but I had John Young to suggest this plan to the girl and the improvements on this place were a substantial small house on the prairie place.

123 Cross-examination.

Mr. Butte:

Q. Did William Bob the father of Annie Martin ever make a place or build any improvements or cultivate any land in the Cherokee Nation.

A. I don't remember of him making any place of any kind or making any cultivation; he never was engaged in any work until after the marriage of the young man to the mother of Annie Martin.

Q. Did he make a place after his marriage to the mother of Annie Martin.

A. No, sir.

Q. Where did William Bob and his family make their home after his marriage with the mother of Annie Martin, if you know.

A. They made their home with Wallace Thursday's family.

Q. Did William Bob do any work on the Wallace Thursday place during the time he and his family made their home there.

A. I don't know; I wasn't down there very much.

Q. Don't you know that William Bob assisted his mother Mary Thursday in making the place which was known as the Thursday place.

A. I don't know whether he assisted her in making that place.

Q. Where is William Bob buried.

A. I don't know just where they buried William Bob.

Q. Where did he die.

A. He died at the residence of Wallace Thursday.

Q. When did Wallace Thursday marry Mary Thursday.

A. The best I recollect Wallace Thursday married Mary Thursday some time after the Delawares moved from Kansas to the Cherokee Nation.

Q. With whom did Mary Thursday live before she married Wallace Thursday here in the Nation.

A. She has never lived with anyone except the father of William Bob which was in the early part of her younger days; she lived single until she married Wallace Thursday here in the nation.

Q. Where did she live with the father of William Bob.

A. They lived in Kansas on the reservation where the Delawares resided at that time.

Q. Didn't she live on her present home place before she married Wallace Thursday.

A. I don't know whether she lived on the present home place or not.

Q. You don't know whether she and William Bob made that present home place or not do you.

A. I don't know whether they lived on that place or not but I knew they lived down in that neighborhood.

A. That was before the marriage of Mary Thursday to Wallace Thursday was it.

A. I don't know.

Q. You got over a thousand dollars that belonged to Annie Martin did you not.

A. Yes I drew the two large payments that was paid to the Delawares.

Q. Why did you not provide an allotment for her.

A. She never accepted the allotment that I had provided for her to take, the lands which I provided for her allotment is the reason why I never made any further effort.

Q. Did you use the money that belonged to her to procure her an allotment?

A. I never used the money that belonged to her to purchase the improvements on the place for her but I traded some stock that belonged to me.

124 The Commissioner:

Q. For those improvements.

A. Yes sir.

Mr. Butte:

Q. You claimed those improvements as your own did you not.

A. I thought the improvements were mine since I paid for them, because at that time there was not any such thing as allotment thought of.

Q. Did you not have an agreement with Mary Thursday that the land in this contest should be reserved as the allotment of Annie Martin out of the old improvements of Mary Thursday.

A. No I never had any agreement, in fact never had any conversation with him along at that time in regard *in regard* to any land.

Q. Did you at any time have any understanding with the Thursdays as to the allotment of Annie Martin.

A. I don't remember of it.

Q. Is it not a fact that Mary Thursday drew some Delaware payments belonging to the father of Annie Martin and also to Annie Martin.

A. I don't know positively but I think probably she had drawn the payments of Mary Martin until I claimed authority of Mary

Martin and so far as the payments are concerned belonging to William Bob I don't know whether she drew it or not.

Q. Did you not understand that the land in contest was to be kept for Annie Martin in consideration for the original improvements upon the old place built there by William Bob and in further consideration of the Delaware payments drawn by Mary Thursday for William Bob and Annie Martin.

Objected to on the ground the witness has testified he doesn't know where the land in controversy is.

A. I don't know whether they had promised this allotment to Annie Martin in consideration of the drawing of this payment or a portion of the improvements of the present place.

Q. Do you know where the old house is in which Mary and William Bob and his family lived together.

A. I never was at the house, at that time though I was familiar with the house, I had passed there and seen it at a distance and knew that William Bob and his mother lived there and I could always tell by seeing an old orchard on the place, that that was their home.

Q. Who built the house?

A. I don't know who built the house.

Q. Who planted the orchard.

A. My first statement as to the trees round the house I won't be certain that they were fruit trees, likely they might have been some other kind of trees and I won't say whether they was planted by any one at all or not.

Q. Was there any cultivated ground about the house?

A. I don't know; I wasn't close enough to know whether it was cultivated ground or not.

Q. Was there any fence about the place?

A. There seemed to be a comparative small place; I wasn't close enough to know whether there was a fence round the place or not.

The Commissioner:

Q. Were you ever appointed guardian of Annie Martin.

A. I have no recollection of any guardianship being made.

Q. Was it with anybody's consent that you took the custody of Annie Martin when she was a child.

125 A. I had the consent of the people that had custody over the child and I got it at the Delaware payment. Charles Journey Cake was living at that time and Capt. Curly head and another young man, the recommended that I might take the child in custody for the reason that I was probably in better circumstances to care for the child *then* the old lady was, the grandmother of Mary Martin for the reasons that she was deaf and probably wouldn't be able to care for the child.

Q. Did you procure the custody of this child by saying that you wished to take her to your house to see a sick brother.

A. I recollect that the brother of Annie Martin was very sick at that time but I never gave that as an excuse to get her or to secure the custody over her for that reason but after she came there it

wasn't only to see her brother but she was brought there by a lady friend that was staying up at my house also at that time.

Q. Is it or not a matter of fact that this child was stolen from the custody of Mary Thursday.

A. I don't think the child was stolen out, it seemed to be the consent of the people that it was in custody at that time for the child to be taken.

Q. Was Annie Martin's father living at that time.

A. I don't recollect whether Annie Martin's father was living at that time or not.

Q. Do you know anything about Jasper Exendine furnishing money to send Annie Martin to Haskell to school.

A. My younger son Edward Frenchman was the man that suggested that my children go to school at Lawrence Kansas, she was afterward taken there but I don't know whether Jasper had anything to do with it or not.

Q. How long did Annie Martin remain at school at Lawrence.

A. She stayed about I think something over a years, I don't know just how much over a year.

Q. Did she again return to your house to live?

A. Yes she came back to my home.

Q. How long did she remain at your house after that.

A. She remained over a year at my place after she returned.

Q. Do you know where she went after leaving your house.

A. After she left my place her and her husband they lived near Rock Ford and Little Caney river and remained there a short time then they went down to Mr. Thursday's and that's—I don't know just where they went.

Q. How many years ago was it that Annie Martin and her husband went to Thursday's to live.

A. I don't recollect; I didn't keep account of the time; it has been several years ago they left up there and went down in that neighborhood, down about Mr. Thursday's.

Q. Did you ever speak to Annie Martin about taking as her allotment the land you have heretofore spoken of as having purchased in exchange for stock.

A. I never had a direct conversation with her in regard to taking that allotment but I told a man named John Young and wanted him to talk to the girl in regard to taking an allotment up there but I don't know whether he did or not.

Q. Is that the only time or occasion in which you made any effort to procure an allotment for Annie Martin.

A. Yes I never made any other effort to procure an allotment for her for the reason she had gone down and gone to make her home down about Mr. Thursday's place.

Q. Did you ever have any conversation with Mary or Wallace Thursday relative to Mary Thursday getting Annie Martin an allotment.

A. No sir I have had no conversation with them in regard to allotment.

Q. Do you know of your own knowledge whether or not Mary Thursday ever held any land for allotment for Annie Martin.

A. No sir.

126 Mr. Butte:

Q. Did you sell the place that you suggested Annie Martin should file on.

A. After I decided to take my allotment where my allotment is situated now I never paid any more attention to the place that I had suggested that Mary Martin should take; I don't know what became of the improvements on the place.

Q. Who was in possession of the place you say you provided for Annie Martin?

A. There wasn't anyone living in the house on the place that I suggested; I recollect when the country was surveyed the four corners of the section were just about center ways of the field probably leaving about 60 acres in one allotment of the best part of the place.

Q. Did you expect to take this place in allotment for yourself before you chose your present allotment.

A. No I had no thought of it at that time because the question of allotment had not been very well in existence and at that time I had no thought of taking allotment except where I lived at the old home place.

Q. You did not buy this place with the intention of allotting only what belonged to you.

A. No sir I purchased it because I thought it was a good purchase for the purpose of raising grain there.

Q. Did you ever give account to anyone for the moneys which you received belonging to Annie Martin.

A. I never give any account of the payments drawn belonging to Mary Martin but it is supposed it was known how much I drew from the Government belonging to Mary Martin because it was known how much annuity was drawn per capita at each of those payments made to the Delaware Tribe.

Q. Did you say that after Mary went down to her grandmother's place you gave no further thought to provide an allotment for her.

A. After she married and left my place I paid no more attention for the reason I thought she had a husband and he would provide for her.

Q. Did Annie Martin do any work during the time she was living with you.

A. Yes sir she done round the house; did the house work during the time she stayed there.

Q. Was she self supporting from the time she left your home to go to school.

Objected to as irrelevant and immaterial.

A. I supported her after she returned from school up until she married Martin and since then I gave her a hog.

Q. Don't you know that on February 26, 1896 you were appointed guardian of Annie Martin by the Cherokee courts.

A. I don't recollect; I don't know whether I was appointed or not.

The Commissioner: The petition heretofore referred to in the testimony relative to Wallace Thursday petitioning the Commissioner to the Five Civilized Tribes to designate certain lands as Delaware surplus of Mary Thursday having been found the same will be received and considered in the testimony herein and marked Contestees' Exhibit H.

Mr. Butte: We ask leave to file a motion for an adjournment of this hearing at Bartlesville for the purpose of taking testimony of witnesses who could not on account of physical disability be present at this hearing and we will submit that motion in writing supported by affidavits in a very few minutes if the court will give us that length of time.

The contestant filed motion for adjournment of hearing at Bartlesville at the conclusion of testimony of witness introduced on behalf of contestant and contestee at the trial of this case.

The Commissioner: Have you got anything to say to that Mr. Harnage.

A. Certainly I object to it.

The Commissioner: In view of the fact that when this case was called for trial both parties announced ready and no showing having been made as to the absence of any material witnesses and the case having proceeded to a conclusion as to the witnesses present on behalf of all parties litigant herein contestee's objection to the motion is sustained and the motion is over ruled.

Mr. Butte: To which contestant excepts and respectfully asks a review of the ruling by the Law Clerk in charge of this case by the Honorable Commissioner.

Testimony closed.

Clara Mitchell Wood being first duly sworn upon her oath states that as stenographer for the Commissioner to the Five Civilized Tribes she has reported the above and foregoing proceedings and that this is a correct transcript of her stenographic notes.

(Signed)

CLARA MITCHELL WOOD.

Subscribed and sworn to before me this 24th day of October 1907.

(Signed)

S. C. PITTS,

Notary Public. [SEAL.]

Department of the Interior.

Cherokee Allotment Case #926.

ANNIE M. MARTIN, Contestant,

vs.

JESSE L. HARNAGE, Contestee.

Motion for Adjournment of Hearing to Bartlesville 17.

Comes now Anna Martin, Contestee in the above styled cause, and respectfully prays the Honorable Commissioner for an adjournment

of the hearing of said cause to the town of Bartlesville, Indian Territory, at a date to be fixed by the Honorable Commissioner, and in support thereof states:

(a) That two important witnesses in her behalf are absent from this hearing without her procurement or consent.

(b) That the names of said witnesses and their post offices are as follows:

128 Mary Thursday, Bartlesville, Ind. Ter.; Patiacow, Bartlesville, I. T.

(c) That both of said witnesses would testify if present, that the father of the contestant, William Bob, originally made the place upon which Mary Thursday and the contestant resided and that said place included a portion of the land involved in this contest; that said William Bob was the father of the contestant and that she inherited an interest in said place at the time of his death; that Mary Thursday aforesaid is the grandmother of the contestant and that contestant lived with her after her father's death until the time she was forcibly taken away from her by some persons at the instance of Frank Frenchman; that said Mary Thursday after the death of said William Bob took possession of the improvements upon the land in contest erected by said William Bob and in addition thereto drew the Delaware payments of the said Bob after his death and of the said Anna Martin prior to her forcible removal to the house of Frank Frenchman; that said Mary Thursday in consideration of said improvements and said payments, held the land in contest for the use and benefit of contestant and in order that she might select the same in allotment; and was so holding the same at the time contestee selected the same.

(d) That said evidence is material to the issues in this case.

(e) That diligent effort was made to procure the attendance of said witnesses; that contestant offered to pay the expenses of said parties to Muskogee but by reason of their advanced age (both of said women being very old and feeble and rarely ever leaving home, said Mary Thursday according to affiant's information and belief not having been away from her home place in more than ten years) both of said witnesses refused to come.

(f) That affiant believes the testimony of said witnesses can be procured by adjourning this hearing to Bartlesville, Ind. Ter., the place of their said residence.

(Signed)

S. G. MAGEE,
Att'y for Contestant.

UNITED STATES OF AMERICA,
Indian Territory,
Western Judicial District:

Before me, the undersigned Notary Public within and for the territory and district aforesaid personally appeared S. G. Magee, to me personally well known, and upon oath states that he is the attorney of the contestant in the above styled cause; that he has read the within and foregoing affidavit for an adjournment of said hear-

ing; that said motion is not made for the purpose of delay but solely that justice may be done in said cause; that the matters and things therein contained are true as affiant verily believes.

(Signed)

G. S. MAGEE.

Subscribed and sworn to before me this 26th day of September, 1907.

(Signed)

S. C. PITTS,
Notary Public. [SEAL.]

CONTESTANT'S EXHIBIT "A."

Improvement Plat.

Contestee's Exhibit A is dictated into the record at page 39 of the testimony. F. R. L.

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CONTESTEE'S EX. B.

Know all men by these presents, that I, Wallace Thursday, Guardian of the person and Estate of Sam Bob, a minor, and Mary Thursday, a person of unsound mind, of Bartlesville, Indian Territory, for and in consideration of the sum of Two Hundred and Fifty (\$250.00) Dollars, to me in hand paid, receipt of which is hereby acknowledged, do hereby bargain, sell convey and transfer to Jess L. Harnage of Tablequah, Indian Territory, all the right title and interest which Sam Bob and Mary Thursday may have in said premises, as well as the possessory right thereto, which said land is described as follows, to-wit:

The Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section Thirteen (13), Township Twenty-six (26) North, Range Twelve (12) East.

It is further understood and agreed by and between the parties hereto that in event that Wallace Thursday succeeds in establishing before the Department of the Interior his citizenship as a citizen of the Cherokee Nation, then said Jess L. Harnage will execute and deliver to said Wallace Thursday a bill of sale conveying back to him, the said Wallace Thursday, all the improvements hereinbefore conveyed in order that said Wallace Thursday may select the same in allotment for himself.

It is further understood and agreed that in the event that said Wallace Thursday does not succeed in establishing his citizenship as aforesaid, then said Jess L. Harnage shall grant to Wallace Thursday a life estate in the use of the surface of said land for farming purposes, alone, and should wells be drilled upon said land and the same found to be productive of oil and gas, then he, the said Jess L. Harnage shall grant to said Wallace Thursday the royalty accruing to him, the said Jess L. Harnage, on a good one gas or oil producing wells for life, as may be at the time determined by said Wallace Thursday.

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In witness whereof, the parties hereto have hereunto set their hands this 29th day of May, 1905.

(Signed) His
WALLACE THURSDAY, *Guardian.*
mark.

Witness:

R. S. BRADLEY.
H. H. BRYANT.

UNITED STATES OF AMERICA,
Northern Judicial District,
Indian Territory, ss:

Be it remembered, that on this 29th day of May, 1905. personally appeared before me a Notary Public in and for the Territory and district aforesaid, duly commissioned, qualified and acting as such, Wallace Thursday, to me well known as the person who signed the within and foregoing agreement; and acknowledged that he executed the same, as guardian, for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and notari-l seal this 29th day of May, 1905.

(Signed) MARGARET N. DICKINSON,
[SEAL.] *Notary Public.*

My commission expires March 10, 1909.

CONTESTEE'S EX. C.

Ex. F.

This agreement, made and entered into on this 10- day of June, 1905, by and between Jess L. Harnage, of Tahlequah, Indian Territory, party of the first part, and Wallace Thursday, of Bartlesville, Indian Territory, party of the second part, Witnesseth:

131 That whereas, the party of the first part has taken in allotment the following described lands, to-wit:

The Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section 13, Township 26 North, Range 12 East; and,

Whereas, the party of the second part has been in possession of said lands, either in his own behalf, or as guardian, for some years; and

Whereas, the citizenship of the party of the second part is not yet determined; and

Whereas, the party of the second part is desirous of securing to himself such interest in said land as may be possible at this time.

Now, therefore, for and in consideration of the premises and in consideration also of the sum of One Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, the party of the first part hereby rents and leases to the party of the second part for agricultural purposes, for the term of five years from date hereof, the following described lands in the Cherokee Nation, together with all the improvements and appurtenances thereunto belonging:

The Northwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section Thirteen (13), Township Twenty-six (26) North, Range (12) East.

In witness whereof, the parties hereto have hereunto set their hands this 10- day of June, 1905.

(Signed)

J. L. HARNAGE.

Witness:

— — —
— — —

UNITED STATES OF AMERICA,
Northern Judicial District,
Indian Territory, ss:

132 Be It Remembered, that on this 10- day of June, 1905, personally appeared before me a Notary Public in and for the Territory and District aforesaid, duly commissioned, qualified and acting as such, Jess L. Harnage of Tahlequah, Indian Territory, to me well known as the person who signed the within and foregoing agreement, and acknowledged that he executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

Witness my hand and notarial seal this 10- day of June, 1905.

(Signed.)

EVA MCGREGOR.

My commission expires the 31- day of August 1908.

On page 129 [132 of this record] and at the end of "Exhibit C" and prior to Contestee's Exhibit D, insert

Department of the Interior,

Commissioner to the Five Civilized Tribes.

Cherokee Land Office.

Cherokee Allotment Contest No. 830.

ELLA E. HEADY, by Her Husband, JOSHUA B. HEADY, Contestant,

vs.

SAMUEL BOB, a Minor, Contestee.

Land in Controversy.

S.W./4 N.W./4, less 3.08 acres for K. O. C. R. R. Right of way, and S.W./4 N.E./4 Sec. 13, T. 26 N., R. 12 E. I. M. containing 76.92 acres.

Confession of Judgment.

Now comes the contestee, Samuel Bob, in his own proper person, and requests the Commissioner to cancel and set aside his selection

of the land in controversy and consents that contestant may have judgment therefor, for the reasons given in his testimony of this date.

(Signed.)

SAM BOB.

— this — day of — 1906.

W. E. A.

_____,
Commissioner.

CONTESTEE'S EXHIBIT D.

June 10, 1905.

Mr. James A. Veasey, Bartlesville, I. T.

DEAR SIR AND FRIEND: Your letter with the contract enclosed received, but I have been very busy and did not attend to it. I am very sorry the delay occurred, but I really could not help it. I note that something was said in the contract with reference to Wallace getting the best well on the place. I don't know *that* anything about that, but I did promise that he should have an average producing well. However we will not raise the question, now, but I did not intend that he should have the best well on the premises. I intend to give him a life interest in the surface of the soil. We will take care of Wallace whatever happens. Have Wallace to sign up the agreement and return a copy of it to me.

I was over in the Land Office this morning, and I saw on one of those blue jacketed papers, "Mary Thursday, Time expires September 3, 1905" I suppose refers to the time in which she still has to designate her surplus.

133 I agree with you that these agreements should be approved by the Court as soon as possible so as to cinch our part of it.

Give my best wishes to Wallace and tell him we will take care of him whatever happens.

Thanking you for your past kindnesses, I am,

Very truly yours,

J. H. L.-E. M.

_____.
_____.

Filed Jan. 27, 1910. L. G. Disney, Clerk U. S. Circuit Court,
Eastern Dist. Okla.

CONTESTEE'S EXHIBIT E.

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

In the United States Court for the Northern Judicial District of the
Indian Territory, Sitting at Nowata, at the April Term, 1905.

In the Matter of the Guardianship of MARY THURSDAY, an Insane
Person, *ss:*

Order of Court.

Comes now Wallace Thursday, guardian of the person and Estate
of Mary Thursday, an insane person, and the matter of the petition
of said guardian, relative to the sale of certain improvements upon
the surplus Delaware holdings of said Mary Thursday, coming on in
its order to be heard, and the Court being fully advised in the
premises from the report of the Master in Chancery herein and the
evidence adduced in support of said petition finds that the same
should be granted.

It is therefore ordered, adjudged and decreed by the Court that
Wallace Thursday, guardian of the Person and Estate of Mary
Thursday, a person of unsound mind, be and he hereby is, author-
ized and empowered to sell, to Jesse L. Harnage, of Tahlequah, In-
dian Territory, a Cherokee citizen entitled to receive the same, the
undivided one-half interest which the said Mary Thursday
owns in and to the improvements erected and standing upon
the following described land in the Cherokee Nation, to-wit:

The Northeast quarter of the Southwest quarter, less 3.08 acres
K. O. C. & S. R. R. right of way, and the Northwest quarter of the
Southeast quarter of Section 13, Township 26 North, Range 12
East, containing 76.92 acres; said improvements consisting of three-
quarters mile of wire fence of 3 strands of wire, with posts 1 rod
apart.

It is further ordered and adjudged by the Court that said sale
shall be made by said guardian to said Harnage at a sum fixed and
determined by the person appointed by the President to appraise
the improvements of Delaware-Cherokee citizens upon their surplus
holdings and according to the further regulations of the Department
of the Interior proper in such cases.

And it is further ordered, adjudged and decreed by the Court
that the amount for which such said undivided interest shall be
sold shall be a lien upon the rents and profits of the above described
land until said amount is fully paid and liquidated.

Done at a regular term of the United States Court, in the Indian
Territory, for the Northern District, on the 21 day of June, 1905.

(Signed)

WILLIAM R. LAWRENCE,

*Judge of the U. S. Court for
the Northern Judicial District, I. T.*

UNITED STATES OF AMERICA,

Northern Judicial District, Indian Territory, ss:

I, Charles A. Davidson, Clerk of the United States Court, in and for the Northern Judicial District, Indian Territory, do hereby certify that the above and foregoing is a true and complete copy of an order of the United States Court, made in the above cause, at

135 Nowata, I. T., on the 21st day of June, A. D. 1905, as the same appears on the records in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of said Court on this 21 day of June, 1905.

[SEAL.]

CHAS. A. DAVIESON, *Clerk,*

By J. H. MOREHOUSE, *Deputy.*

Filed Jan 27, 1910. L. G Disney, Clerk U. S. Circuit Court Eastern Dist. Okla.

CONTESTEE'S EXHIBIT F.

UNITED STATES OF AMERICA,

Northern Judicial District, Indian Territory, ss:

In the United States Court for the Northern Judicial District of the Indian Territory, Sitting at Nowata, at the April Term, 1905.

In the Matter of the Guardianship of SAM BOB, a Minor, *ss:*

Order of Court.

Comes now Wallace Thursday, guardian of the person and Estate of Sam Bob, a minor, and the matter of the petition of said Guardian, relative to the sale of certain improvements upon the surplus Delaware holdings of said Sam Bob, coming on in its order to be heard, and the Court being fully advised in the premises from the report of the Master in Chancery herein and the evidence adduced in support of said petition, finds that the same should be granted.

It is therefore ordered, adjudged and decreed by the Court that Wallace Thursday, Guardian of the Person and Estate of Sam Bob, a minor, be, and he hereby is authorized and empowered to sell to Jess L. Harnage, of Tahlequah, Indian Territory, a Cherokee citizen entitled to receive the same, the undivided one-half interest which the said Sam Bob owns in and to the improvements erected and standing upon the following described land in the Cherokee

136 Nation, to-wit:

The Northeast quarter of the Southwest quarter less 3.08 acres K. O. C. & S. R. R. right of way, and the Northwest quarter of the Southeast quarter of Section 13, Township 26 North, Range 12 East, containing 76.92 acres; said improvements consisting of three quarters of a mile of wire fence of 3 strands of wire, with posts 1 rod apart.

It is further ordered and adjudged by the Court that said sale shall be made by said guardian to said Harnage at a sum fixed and determined by the person appointed by the President to appraise the improvements of Delaware-Cherokee citizens upon their surplus holdings and according to the further regulations of the Department of the Interior proper in such cases.

And it is further ordered adjudged and decreed by the Court that the amount for which said undivided interest shall be sold shall be a lien upon the rents and profits of the above described land until said amount is fully paid and liquidated.

Done at a regular term of the United States Court in the Indian Territory, for the Northern District, on the 21 day of June, 1905.

WILLIAM R. LAWRENCE,

*Judge of the U. S. Court for the
Northern Judicial District, I. T.*

UNITED STATES OF AMERICA,

Northern Judicial District, Indian Territory, ss:

I, Charles A. Davidson, Clerk of the United States Court, in and for the Northern Judicial District, Indian Territory, do hereby certify that the above and foregoing is a true and complete copy of an order of The United States Court made in the above cause, at Nowata, I. T., on the 21st day of June, A. D. 1905, as the same appears on the records in my office.

137 In testimony whereof I have hereunto signed my name
and affixed the seal of said Court on this 21 day of June
1905.

[SEAL.]

CHAS. A. DAVIDSON, *Clerk*,
By J. H. MOREHOUSE, *Deputy*.

DISTRICT OF COLUMBIA, ss:

I, Seabury G. Quinn, being first duly sworn, depose and say: That I carefully examined the record in Cherokee Allotment Contest No. 926, entitled, Annie M. Martin, contestant, vs. Wallace Thursday and Jesse L. Harnage, Contestees, and also the record in Cherokee Allotment Contest No. 830, entitled, Ella E. Heady, by Joshua B. Heady, her husband, Contestant, vs. Samuel Bob, a minor, Contestee, the latter having been made a part of the record by stipulation of counsel in the aforesaid case of Martin vs. Harnage; that the foregoing is a complete record of the testimony adduced at the hearings of said causes and of the complaints on which the hearings were conducted, and of the final decisions rendered in each of the foregoing causes; that I carefully compared the foregoing transcript with the original transcript of record on file in the Office of the Secretary of the Interior, and that the same is a true and correct and an examined copy of the foregoing papers to which this certificate is attached and of each and every of said papers.

SEABURY G. QUINN.

Subscribed and sworn to before me this 22d day of December,
A. D. 1908.

[SEAL.]

HAZEL NORDEMAN,
Notary Public, D. C.

My commission will expire Nov. 1/09.

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Ex. H.

Return to James K. Jones.

Department of the Interior,
Commission to the Five Civilized Tribes.
Cherokee Land Office.

TAHLEQUAH, I. T., October 8, 1904.

Cherokee Allotment Contest No. 830.

ELLA E. HEADY, by JOSHUA B. HEADY, Her Husband, Contestant,
vs.

SAMUEL BOB, a Minor, Contestee.

Conflicting Allotment Selections: Southeast quarter of the north-west quarter, less three and eight one-hundredths (3.08) acres, K. O. C. & S. railroad right of way, and the southwest quarter of the northeast quarter of section thirteen, township twenty-six, north, range twelve east, of the Indian meridian, containing seventy-six and ninety-two one-hundredths (76.92) acres.

Appearances:

Contestant appears by Joshua B. Heady, her husband, and by J. A. Tillotson and W. W. Hastings, her attorneys.

Contestee appears by Wallace Thursday, his legal guardian, and by Hutchings, Murphey & Veasey, his attorneys.

Testimony on the Part of Contestant.

JOSHUA B. HEADY, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. Joshua B. Heady.

Q. What is your post office address?

A. Watova, I. T.

Q. What is your age?

A. Forty-five.

Q. What relation do you sustain to Ella E. Heady, the contestant herein?

A. She is my wife.

Q. Have you been acting for your wife in any capacity both as to filing and as to the purchase and acquirement of the land in controversy, and, if so, in what capacity have you acted?

A. As her agent.

Q. Did you act as her agent in the purchase of this land?

A. I did.

Q. Did you act as her agent under power of attorney when you filed this contest?

A. Yes sir.

Q. And you have acted for her and as her agent throughout this whole controversy?

A. Yes sir.

Q. Your wife you say is Ella E. Heady?

A. Yes sir.

Q. What is her citizenship?

A. She is a Cherokee-Delaware citizen.

139 Q. She is regularly enrolled upon the approved Delaware-Cherokee roll?

A. Yes sir.

Q. How old do you say she is?

A. Thirty-five.

Q. Mr. Heady, do you know the land that is in controversy?

A. Yes sir.

Q. It is described as being the SE4 of the NW4, less 3.08 acres K. O. C. & S. R. R. right of way, and the SW4 of NE4 of Section 13, Twp. 26 North Range 12 East. Is that the correct description?

A. I think so.

Q. Are there any improvements upon or around the land in controversy?

A. Yes sir.

Q. What do the improvements consist of upon it or around it?

A. There is a log house. I think it is a shed room on each side of it, a little barn and probably a corn crib and a well, and it is fenced.

Q. What kind of a fence, Mr. Heady?

A. The fence on the north, I think, was a seven wire fence when I bought it. I have taken some of the wire off.

Q. Is there any on the east or west?

A. On the east I think there is only about four or five wires. I wouldn't be sure. On the south I put a two wire fence through there. On the west it joins Mr. Lannom. There is no division fence between us. It joins onto Mr. Lannom's.

Q. There is no fence there?

A. No, it joins onto Lannom's fence.

Q. There is a fence there, a division fence between them?

A. Yes sir.

Q. But the fence belongs to Lannom?

A. Yes sir.

Q. Does your wife own the improvements upon the land and around the land in controversy?

A. I think she does.

By Mr. Veasey: We object to the form of the question.
Objection noted.

Q. Who owns the improvements upon and around the tract of land in controversy?

A. My wife.

Q. When did she acquire them?

A. The first of April, 1904.

Q. I believe you have already testified that you acted as her agent in the purchase of this place?

A. Yes sir.

Q. From whom did you purchase it?

A. Wallace Thursday.

Q. Is Wallace Thursday the man here, guardian of the contestee?

A. Yes sir, I think so.

Q. Don't you know it?

A. Yes. You asked me if I knew he was guardian.

Q. I asked you if he was the same man?

A. Yes sir, the same man.

Q. Did you receive any bill of sale of the land at the time you purchased it?

A. Yes sir.

Q. Did you say that you purchased it on the 1st day of April, 1904?

A. Yes sir.

Q. Were all these improvements that you described on the land except the fence along on the south side that you just now testified about at the time you purchased it?

A. Yes sir.

Q. Was any of the land in cultivation?

A. Yes sir.

140 Q. About how much?

A. I think about 15 acres.

Q. The rest of it is—?

A. Grass land.

Q. Meadow?

A. Yes sir.

Q. Did you receive any bill of sale for your wife at the time this trade was made upon April 1, 1904?

A. I did.

Q. What became of that bill of sale?

A. I filed it with the Dawes Commission.

Q. When you made your application to file upon this for your wife?

A. Yes sir.

Q. Mr. Heady, did you file this contest for your wife?

A. Yes sir.

Q. Did you file under a power of attorney?

A. Yes sir.

Q. Was that power of attorney filed with the Commission?

A. Yes sir.

Q. And attached to the papers in this case?

A. Yes sir.

Q. Did you say the bill of sale that you got for your wife from Wallace Thursday, of the land in controversy, was filed with your filing for your wife in this case?

A. Yes sir.

Q. I will ask you to examine this paper and say whether or not that is the bill of sale that you have referred to in your previous testimony?

A. Yes sir, that is the one.

By Mr. Hastings: The contestant here asks that the bill of sale referred to be detached from the filing made by Joshua B. Heady for his wife, Ella E. Heady, and offers the same in evidence in this case.

By the Commission: The paper is received in evidence and marked for identification contestant's exhibit "A."

Q. Mr. Heady, what was the consideration that was paid for the land in controversy?

By Mr. Veasey: We object to that for the reason that the bill of sale is the best evidence.

Objection noted.

A. \$2700.00.

Q. What the consideration in the bill of sale \$2700 paid to Mr. Thursday?

A. Yes sir.

Q. Did this transaction take place on the first day of April, 1904?

A. Yes sir.

Q. Where?

A. At Wallace Thursday's house.

Q. Who was present, Mr. Heady?

A. Charley Julian, the notary public who drew the bill of sale, and J. L. Moran, who was with me, and Bill Fields I think was present.

Q. Did you ever take possession of the tract of land in controversy?

A. Yes sir.

Q. When?

A. The second day of April, 1904.

Q. Well, what did you do?

A. Well, I bought fifteen dollars worth of wire and 200 posts, ten dollars, and went out there and run a line between the eighty I bought and the land belonging to Sam Bob.

Q. Was this eighty you bought north or south of the land
141 belonging to Sam Bob?

A. North.

Q. Have you got the crops off of it for this year of 1904?

A. No sir. I got the pasture land. In our contract Mr. Thursday was to have the range. It was already rented, and he said he wanted the grass for hay this winter, and I bought the grass from

him for a pasture. I had some teams there and wanted it, and I gave him thirty dollars for the grass.

Q. And he was to get the rent off the improved land?

A. Yes sir.

Q. Have you been in possession of this meadow land ever since?

A. Yes sir.

Q. Was Sam Bob present when this bill of sale was drawn, about the house?

A. Yes sir.

Q. You know Sam Bob, do you?

A. Yes sir.

Q. Was Wallace Thursday's wife present, or about the place?

A. Yes, I think she was.

Q. Had you any talk with Mr. Thursday before this time about the purchase of this place, before you actually purchased it for your wife?

A. Yes sir, I was out there one day just after noon, drove out there to see him about the place, and he told me to come back the next morning. After I got to town, Mr. Fields told me that to come out and to bring a Notary Public with me; that I could have the place.

Q. Had you made an offer to him that morning?

A. Yes sir.

Q. And in response to this information, did you go back out there that evening?

A. I did.

Q. What did Mr. Thursday say about the payment of this money that evening when you were out there?

A. Well I told him I would pay him three hundred dollars down, and pay him the other twenty-four in ten days or forfeit the three hundred dollars paid.

Q. Well, was three hundred dollars paid?

A. Yes sir.

Q. By money or check?

A. Paid by check.

Q. What did Thursday do with the check?

A. He told the Notary Public to look after his interests and put it in the bank for him.

Q. Was that Charley C. Julian?

A. Yes sir.

Q. To whom were you to pay the twenty-four hundred dollars?

A. I was to pay it to Charley Julian.

Q. Did you pay him.

A. Yes sir.

Q. You paid it within the ten days?

A. It was paid the ninth day; this is Saturday evening, and Friday, I think was the ninth.

Q. Was the entire amount of \$2,700 paid over to Mr. Thursday?

A. Yes sir.

Q. It has been accepted by Mr. Thursday?

A. Yes sir.

Q. Did Mr. Thursday have any other land at the time you purchased this land of him for your wife?

A. Well, he said he had 160 acres there for his wife and eighty acres for Sam Bob.

Q. Is Sam Bob the contestee?

A. Yes sir.

Q. Where did he say Sam Bob's land was?

A. Well, he said it was next to his grandmother's, that would be his wife. He said he wanted to file Sam and his grandmother next to each other.

Q. Which direction from this land?

A. On the south.

Q. Joining it on the south?

A. Yes sir.

Q. Who did he say this eighty acres of land was retained for?

A. He said it was his.

142 Q. Did he say why he wanted to sell it?

A. Well, yes, he said there had been several wanted to buy it, and that his citizenship wasn't established, and if he could get enough for it he would sell it.

Q. And you agreed on the trade and bought it?

A. Yes sir.

Q. Do you know whether Mr. Thursday had sold any other land joining this or not?

By Mr. Veasey: Objected to for the reason that it is irrelevant and immaterial.

Objection noted.

A. I don't know personally, I had heard it.

By Mr. Veasey: Objected to for the reason that it is purely hearsay.

Objection noted.

Q. You took possession of this land for your wife the next day?

A. Yes sir, on the second day of April.

Q. You have had possession of it for her since that time, have you?

A. Yes sir.

Q. And put a fence along the south side?

A. Yes sir.

Q. How long had you known this place before you purchased it?

A. I had seen the place for the last ten or fifteen years.

Q. Did you say to Wallace Thursday at the time you purchased it for whom you were buying the place?

A. Yes sir.

Q. For whom did you tell him?

A. I told him I was buying it for my wife; that I expected to make a home of it. That my wife a Delaware, and after some time he said he remembered the folks and knew my wife's mother.

By Mr. Veasey: Objected to as irrelevant and immaterial. We move to strike that out.

Motion noted.

Q. How far does this land lie from Bartlesville?

A. It is a quarter of a mile south of the south limit of the town, unless they have taken some land into the town since I knew it.

Cross-examination.

By Mr. Veasey:

Q. Where do you live, Mr. Heady?

A. Watova.

Q. How long have you been living there?

A. About 12 or 14 years.

Q. How far is that from Bartlesville?

A. 25 miles.

Q. How many members of your family are entitled to allotments?

A. Eight.

Q. Have you selected lands for the other members of your family other than your wife?

A. Yes sir.

Q. Where?

A. Near Watova.

Q. The only allotment you have in the neighborhood of Bartlesville is the one you have taken for your wife?

143 A. Yes sir.

Q. When did you first hear of this land you claim to have purchased for your wife? When did you first hear of its being for sale?

A. Some time in March, oh, possibly the twentieth.

Q. Who communicated that fact to you?

A. I don't know, I heard several parties talking about it.

Q. Who in particular?

By Mr. Hastings: Objected to as irrelevant and immaterial. Objection noted.

A. J. L. Moran.

Q. What business is J. L. Moran in?

By Mr. Hastings: Objected to as irrelevant and immaterial. Objection noted.

A. I think he is working for the Test Oil Company.

Q. Who is President of the Test Oil Company.

By Mr. Hastings: Objected to as irrelevant and immaterial. Objection noted.

A. I don't know.

Q. What connection has Mr. Johnson with that company?

By Mr. Hastings: Objected to as irrelevant and immaterial. Objection noted.

A. I think he is a stockholder.

Q. You don't know whether he holds any office or not?

A. It strikes me he does.

Q. You don't know what office?

A. No sir.

Q. And Mr. Moran is agent for the company?

A. Yes sir.

Q. You may say it was in March you first heard this land was for sale?

A. Yes sir.

Q. Where were you at the time?

A. Bartlesville.

Q. And you came in contact with Mr. Moran there?

A. Yes sir, and ask- him for some land in connection with Mr. Buford.

Q. What did they tell you in connection with this?

A. They said they thought I could buy eighty acres from Wallace Thursday.

Q. Did they tell you why they thought you could buy eighty acres from Wallace Thursday?

A. They said they understood he had some for sale. He had been selling some.

Q. Did they say anything about his disputed citizenship?

A. Yes, I think they said his citizenship was in question.

Q. And on that account he would probably sell some land?

A. Yes sir.

Q. What business are you in, Mr. Heady?

A. Well, I have been a farmer nearly all my life.

Q. What were you doing at the time you made this purchase?

144 A. I was there to buy a home for my wife.

Q. What business were you engaged in?

A. I had a farm. I farmed last year and this year had the place rented out.

Q. After you had this talk with Moran and Buford relative to purchasing this eighty acres of land, how long was it before you went to see Wallace Thursday?

A. I don't know.

Q. Do you know Bill Fields?

A. Yes sir.

Q. He is a renter of Wallace Thursday?

A. Yes sir.

Q. Did he ever communicate with you concerning this land. Consult with you in regard to it?

A. No sir, never talked with me until the day I bought the place.

Q. You never had any conversation with him at all before you bought the place?

A. Not until that day.

Q. Can you tell me approximately how long it was from the time you first heard of the place until you went there to buy it?

A. About three weeks.

Q. And at the end of three weeks you went to see Wallace Thursday in regard to the purchase of the place?

A. Yes sir.

Q. Do you remember the day of the month?

A. The first day of April.

Q. What time of day was it?

A. Just after noon.

Q. Who went with you?

A. J. L. Moran.

Q. Was he the only one?

A. Yes sir.

Q. You found Thursday at home, did you?

A. Yes sir.

Q. Was he alone?

A. I think Bill Fields was there.

Q. And that was your first personal acquaintance with Bill Fields.

A. Yes sir.

Q. Were you introduced to him.

A. I had known him way before that,

Q. Any one else there besides Bill Fields?

A. I don't think there was.

Q. You know as a matter of fact that Wallace's wife is insane, isn't she?

A. Yes sir.

Q. And has been so adjudged?

A. Yes sir.

Q. Sam Bob wasn't there on the occasion of your first visit?

A. I don't know. I don't think he was in the house. He might have been.

Q. Wallace Thursday was sick at the time, wasn't he?

A. Yes, sir, he was in bed.

Q. Who approached the subject of the purchase? Who mentioned it first?

A. Why Mr. Moran introduced me to Mr. Thursday, and told him I wanted to buy a place for my wife. I think Moran is the man that first spoke to him about the place.

Q. Now, did he at that time specify a definite place there he wanted to buy, that is, did Moran?

A. Well, I don't know whether it was specified or not.

Q. You simply wanted a place, you didn't know what place you wanted?

A. I wanted to buy a place, yes.

Q. You hadn't examined any part of Thursday's holdings on the way out?

A. No sir.

Q. But you were willing to take any part of the land that might be for sale?

A. Yes sir.

Q. Moran conducted the negotiations on the occasion of the first visit?

A. He done part of the talking. I told Thursday who I wanted the place for, and told him my wife was a Delaware.

Q. Did you suggest the particular part of the farm you wanted when you made that proposition?

A. At this particular time?

Q. Yes, on this first occasion?

A. I think that we spoke of the north eighty of his place.

Q. Who spoke of it, you or Thursday?

A. Mr. Thursday.

Q. You asked him if he had any place to sell, and he said he had the north eighty to sell?

A. He didn't use just that language.

145 Q. What did he say in reply to your proposition?

A. Well, I don't know just how he did word it, but he said there was several men in ahead of me. That he had some land to sell. And Moran says to him, "Well, you would sell to the highest man, wouldn't you, Wallace?" And he said, "Yes sir." He said he would sell to the highest man.

Q. Did he mention Buffington's name?

A. Yes, he said Tom Buffington had been out there.

Q. What did he say?

A. He said, "Tom Buffington offered me \$1700 for the place."

Q. He said he would sell to Buffington if he lost his citizenship?

A. He talked a good deal about his citizenship.

Q. He spoke that way to you, didn't he, that he was selling because he couldn't keep his citizenship?

A. He said his citizenship hadn't been established, and some said he would hold a right and some said he wouldn't. He said he didn't know.

Q. Did he say who said he wouldn't hold his right?

A. He said there was men after him every day to buy the place.

Q. But he didn't connect the men who said he wouldn't hold his citizenship with the men who were after the place, did he?

A. He didn't say. I can't tell you about that.

Q. What was the progress of the negotiations that afternoon, did you come to a trade?

A. That time? Yes, but we offered him \$2,700 and went back. He said "You come out in the morning."

Q. You offered him \$2,700 for which eighty?

A. The north eighty.

Q. The land in contest?

A. Yes sir.

Q. Do you know of your own knowledge the extent of this land south of this north eighty, how many acres he had at that time in April?

A. No, I don't, Mr. Veasey.

Q. Was it on that occasion he still had land sufficient for—

A. Yes, he said he had an eighty there for Sam and 160 for his wife.

Q. And you knew at that time that you were buying an eighty which would at least deprive him of his allotment in that locality?

A. I never thought of that. I simply bought it.

Q. Didn't you know at that time that if he sold you that eighty acres, that he wouldn't have sufficient land in that locality to make an allotment for himself?

A. No sir, I didn't.

Q. How did his citizenship enter into the matter at all then?

A. Well, in talking over the trade.

Q. In talking over the trade he said if he lost his citizenship he wanted to sell his land, didn't he?

A. He said that that was the only reason that he would sell the land, that his citizenship wasn't established. Some said he would get his rights, and some said he wouldn't, that he didn't know.

Q. And that was the only reason he would sell this land?

A. Yes sir.

Q. So you say the conclusion was that you was to pay him \$2,700 for his land and come back and next morning and fix up the papers, that was the conclusion that afternoon?

A. That wasn't the conclusion at all. He said to come back in the morning.

Q. Had you determined on the trade when he said come back or was it pending?

A. Why, sure, there was no trade made.

Q. No trade made that afternoon?

A. Not at that time.

Q. Fields remained there during the entire time of this conversation?

A. I think he was there, yes sir.

Q. Was there anything else that transpired that afternoon?

A. We drove back to town.

Q. On the way back to town did you examine this north eighty?

A. Why, I had been on the west side of it, not on the east side.

Q. But on this occasion you made some casual glances at the place, didn't you?

A. Yes, sir.

Q. Was this eighty separated by a fence from the land south of it, separated by a fence or do you recall?

146 A. The eighty I bought?

Q. Yes.

A. The eighty I bought and the eighty south was all in one field.

Q. What time did you reach town that afternoon?

A. I think about two o'clock.

Q. You weren't there very long?

A. No, not very long.

Q. You and Moran drove back together?

A. Yes sir.

Q. Fields didn't accompany you?

A. No sir.

Q. You say Wallace was in bed during the time of this conversation?

A. Yes sir.

Q. Did you overhear the greater part of what Moran told Wallace Thursday that afternoon?

A. I was in the house, yes sir.

Q. Did you hear Moran tell Wallace that he would send some whiskey out to him?

A. No sir.

Q. Did that end the transaction with Wallace that day?

A. No.

Q. What then transpired?

A. When we got to town and had been there about an hour, Fields came to me and told me that Wallace Thursday said if I would bring a Notary Public out there he would sell me the place for \$2700.00. I went and found Mr. Moran, and went up to Julian's office and we went out to Wallace Thursday's house. I was the first one went into the house, and I said to Wallace, "Have you concluded to sell your place?" and he said, "Yes, I had just as well sell it."

Q. Why? Did he say because he was going to lose his citizenship?

A. I don't know what he did say about his citizenship. He thought it was a good price. He said he told Bill Fields he could have all over \$2200 he could get for the place.

Q. You say you were the first one to enter the house?

A. Yes sir, when we went back.

Q. Where was Fields?

A. I drove out with Fields in the buggy.

Q. Who was in the other buggy?

A. Moran and Mr. Julian.

Q. Do you remember the conversation you had before you went into the house? Didn't you stop and have a little consultation before you went into the house?

A. We were hitching our horses before we went in, yes.

Q. Do you remember of Moran talking to Sam Bob and afterwards called Fields over there?

A. I don't remember a thing about that.

Q. But you do remember you had a little consultation just before you went into the house.

A. I don't know. We might have talked a little.

Q. You went into the house first?

A. Yes sir.

Q. How long after that before the others came in?

A. Not over two or three minutes.

Q. Wallace was still in bed?

A. Yes sir.

Q. Was Sam Bob there when you went into the house?

A. I wouldn't be positive. I think maybe he went into the house or might have been in the house.

Q. No one else was there when you reached there, that is no one in the room when you entered it?

A. His wife might have been in there.

Q. No one other than his insane wife?

A. I don't think there was.

Q. Did you have any conversation before the others entered or did they enter so shortly after that it was impossible?

A. When I asked him how he was feeling, and he said he had concluded to sell his land, that that was more money than anybody had offered for it, and he had concluded to sell it, that he would

rather sell it to a Delaware than anyone else; now, I said, "Now you know my wife, I am buying it for her, and expect to make it my home."

Q. Did he tell you that for the reason of his sickness, he wanted to provide for Sam and his wife?

A. I don't know all he did say.

147 Q. He said you had given him the biggest price for it, and he wanted to sell because he wanted to do something for Sam and his insane wife?

A. If he worded it that way I didn't understand it.

Q. Did he say it in substance?

A. He might of inferred that. He said it was more money than anyone had offered him, and he was willing to sell.

Q. Did he say anything about his insane wife and Sam?

A. I don't think he did.

Q. Did he say anything about his sickness; that he might die or anything of that sort?

A. I don't know as he said anything about dying. He said he had had the "grip."

Q. You say you don't recollect his saying that he wanted to make any provision for them?

A. I can't say that he did or didn't. I wouldn't be positive.

Q. That was practically all the conversation you had before the others entered?

A. We hadn't spoke but a few words before the others came in.

Q. Who were they?

A. Julian, Moran and Fields.

Q. You told Wallace that you would take the place for \$2,700, and that that was the best price, and that he would take it for his place?

A. Yes sir.

Q. And then what was done?

A. He says, "I want you to understand I am selling the north eighty, and that I want to file Sam next to his grandmother." He says, "I will file Sam Bob next to his grandmother."

Q. He said that Sam's land was next to his grandmother's and he wanted to let you have the north eighty?

A. Yes.

Q. Julian was there at the time, wasn't he?

A. Yes sir.

Q. He must have heard that?

A. I guess so.

Q. He knew Wallace was going to file Sam on the eighty south of the north eighty?

A. I think so.

Q. Did he say why?

A. He said Sam wanted to be filed next to his grandmother, and didn't want anybody else between them.

Q. Since Wallace had concluded to sell the north eighty, Sam would take the next one, because he didn't want anyone between him and his grandmother?

A. Yes sir, that is what he said.

Q. Julian then proceeded to draw up the bill of sale?

A. Yes sir.

Q. Was any conversation had of any moment at that time? Anything you recollect during the time the bill of sale was being drawn?

A. I don't remember.

Q. During the time the bill of sale was being drawn did Julian inquire what the consideration was to be?

A. Yes.

Q. And did you reply \$2,700?

A. I think so.

Q. And he finished drawing the bill of sale, and did he read it to Wallace?

A. Yes sir, he read it to Wallace Thursday, and asked him if he understood it.

Q. What did he say?

A. He said he did.

Q. You read the bill of sale, did you, too?

A. Not then. I was there when he read it, and heard him read it to Thursday.

Q. You watched him read it?

A. Yes sir.

Q. Did you follow him as he read it? Did you read it after him?

A. No, I don't think I did.

Q. But you attended to the reading of it very carefully?

A. Yes sir.

Q. You felt such an interest in it that you would pay very close attention to the reading of the bill of sale.

A. Sure.

Q. You were acting as the agent of your wife at the time?

A. Yes sir.

Q. You knew that Wallace Thursday was the grantor? Was the man selling this land at the time?

A. Yes sir.

Q. And you were careful to see that the description was what it should be, weren't you?

A. Yes sir.

148 Q. The description reads "the eighty acres lying south and adjacent to the land and improvements of one Fred McDaniels, and it says the land lying immediately north of the grantor, that was Wallace Thursday, wasn't it"?

A. Yes sir.

Q. Charley Julian is Moran's attorney, isn't he?

A. I don't know.

Q. Don't you know that?

A. He probably has attended to his business for him.

Q. He was employed to go out there on this occasion?

A. Yes sir.

Q. You know as a matter of fact he looks after Moran's lease work, don't you?

A. I think he does.

Q. Will you examine this bill of sale and say whether or not that is your signature?

A. Yes sir.

Q. You acted as a witness?

A. Yes sir.

Q. You were the disinterested person who witnesses that bill of sale for your wife?

A. Mr. Julian asked for two witnesses. He says "This man signs by his mark, and Bill Fields can't write", and Julian said, "You and Moran can act as witnesses."

Q. Where did you get that \$2700?

By Mr. Hastings: Objected to as irrelevant and immaterial.
Objection noted.

A. I borrowed it from J. L. Moran.

Q. There was an understanding at the time you borrowed it that Moran or his people was to get an oil lease on it, wasn't there?

By Mr. Hastings: Objected to as irrelevant and immaterial.
Objection noted.

A. Yes sir.

Q. That \$2700 was really paid you as a bonus for that oil lease, wasn't it? You don't intend to pay back that \$2700?

By Mr. Hastings: Objected to as being irrelevant and immaterial, and the controversy between J. B. Heady and J. L. Moran, if there be any, is not on trial in this contest case.

Objection noted.

Q. You don't intend to pay it back do you, Mr. Heady?

A. Not if I can keep from it.

Q. You didn't give him a note for it?

A. Yes sir.

Q. You gave him your note for it?

A. Yes sir.

Q. And when this matter was determined or when they got the lease, then this note was to be given back to you?

By Mr. Hastings: Objected to as irrelevant and immaterial.
Objection noted.

A. I gave him my note with Wallace Buford as security and some chattel mortgages I had on parties at Nowata for the \$2700.

149 Q. Then when was that to be paid back? When were you to get your note back?

A. I don't know whether I will ever get it back.

Q. What was the understanding when you were to get it back?

A. Well, if my wife makes him the lease he was to return me my note.

Q. And all the securities you put up?

A. Yes sir.

Q. Mr. Heady, did you examine those improvements on that place with any great deal of care?

A. There are not very many improvements on it.

Q. What you wanted of the land principally was on account of its value for oil purposes?

A. I bought it for a home for the reason that it was near a good school.

Q. If you get it you won't use it for oil purposes, will you?

A. Surely, if I get it, we will bore for oil on it.

Q. Didn't that enter into the consideration of your buying the place?

A. Why of course.

Q. Wasn't that the principal consideration?

By Mr. Hastings: Objected to as immaterial and irrelevant.
Objection noted.

A. I thought it was a good oil proposition.

Q. Did you sign that bill of sale and Moran sign that bill of sale just as Wallace executed it, or did you sign as a witness?

A. We witnessed the bill of sale.

Q. At what time?

A. At Wallace Thursday's house.

Q. After Wallace signed it?

A. Yes sir, after he touched the pen. After Julian read the bill of sale and he said he understood it, he touched the pen, and then he asked for two witnesses, to this signature, and Bill Fields don't write his name, and he said "Why, Heady, you will do, you and Moran witness it".

By the Commission:

Q. What is your wife's name?

A. Ella E. Heady. Ella E. Heady she appears on the roll.

Q. I notice it is Ella in the papers in the case, and Ellen in that bill of sale?

A. Well, you know in spelling Ella some spell it one way and some another. I didn't at the time tell Mr. Julian just how to spell it. She is on the roll as Ella Heady, and he has got it Ellen.

Q. You haven't a daughter named Ellen, have you?

A. No. sir.

By Mr. Hastings:

Q. The person mentioned in that bill of sale is your wife?

A. Yes sir.

By the Commission: When Wallace touched that pen, had the signature been made before you witnessed the paper or had the pen simply been touched when you witnessed it?

A. Mr. Julian made the cross, you know, and he touched the pen and crossed it that way.

Q. You testified after he touched the pen you witnessed the paper. I want to know whether you witnessed it before or after he made the cross?

A. No, the cross was made, and he had touched the pen, and then we witnessed it.

Q. The cross wasn't made until after Thursday touched the pen?

A. No sir, he touched the pen and made the cross that way.

150 E. L. MURRAY, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. E. L. Murray.

Q. What is your age?

A. Fifty-one.

Q. What is your post-office?

A. Bartlesville.

Q. How long has Bartlesville been your post-office? Were you there in March or April, 1904?

A. Yes sir.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. Do you know this land that is in controversy, Mr. Murray?

A. I do.

Q. I will ask you if you ever had any conversation with Mr. Thursday at any time about the sale of this land?

A. Yes, I had a conversation with him about it, oh, along about the middle of April or a little later, the latter part, maybe.

Q. What year?

A. This year.

Q. What was said?

A. I went down to see him about a lease, to see if there was any chance to get a lease from them.

Q. An oil lease?

A. Yes sir, and he told me he had leased all of the land he had, and told me what he had sold, and about selling a piece to Mr. Heady a short time before that.

By Mr. Veasey: We move to strike out the evidence of the witness for the reason that it is hearsay.

Objection noted.

Q. Did he say he had sold this land to Heady a short time before?

A. Yes sir, that he had sold an eighty to Heady a short time before.

Q. Did he say what eighty it was?

A. He said the north eighty of their holdings there.

Q. Do you know how this north eighty was bounded with reference to Fred McDaniels' holdings?

A. It was immediately south.

Q. You are in the oil business, are you?

A. A little, yea.

Q. And you are acquainted with these holdings?

A. Yes sir.

Q. And were then?

A. Yes sir.

Q. Did he say what Mr. Heady gave him for it?

By Mr. Veasey: Objected to for the reason that it is hearsay.
Objection noted.

A. Yes, he told me what he paid him or was to pay him.

Q. How much?

A. \$2700.

Q. Did he say whether or not he had any other land there?

A. He said he had an allotment for his step son I believe, and an allotment for his wife.

Q. Where did he say his allotment for his step-son was?

A. Well, the way I understood him it lay right south of his, and his wife's lay right south of that.

Q. You mean by saying south of his, being south of the eighty he sold to Heady?

A. Yes sir.

Q. Do you know whether he said step-son or grandson?

A. Sam Bob was the name. I don't know the exact relationship.

Q. He said he had an eighty acres south of this he sold to
151 Heady?

A. Yes, he said this came in north, and then Sam Bob's came in next and then his wife's next.

Q. And he said he had sold this north eighty to Heady for \$2700?

A. Yes sir.

Q. Did he say anything about his citizenship, or why he had sold it?

A. He said he thought he had got a good price for it. He said he wasn't on the roll yet, and that he had got a good price for it, even more than if he was on the roll.

Q. Do you know whether the eighty that you spoke of as having been sold to Heady had been fenced off by separate fence?

A. The land is pretty much all fenced up, but I can't tell you whether the fences were anywhere near the lines or anything.

Q. You don't know the lines?

A. No, not exactly.

Q. Do you know whether there was a fence at that time along the south side of this eighty?

A. I can't say as to that. I didn't pay any particular attention to the fences. There was a good many of them there.

Q. Would you consider \$2,700 a fair price for this land the first day of April last year?

A. Yes, I would.

Q. You are in the oil business up there, are you?

A. I have been leasing some, yes sir.

Q. You are not interested with Mr. Heady in any way are you?

A. No sir.

Q. You are not interested in this land or a lease upon it?

A. No sir.

Q. Are you entirely disinterested?

A. Yes sir.

Q. You went out there to see whether or not Mr. Thursday had any land for sale?

A. I went out there to see if there was any land that we could get a lease on.

Q. Did he say to whom he had leased his land?

A. Yes, I understood that outside of this the Delakee Company had leased part of his land.

Q. Do you know whether any of these gentlemen here present are interested in that company?

A. The Delakee?

Q. Yes.

A. Yes, I see a couple of gentlemen here.

Q. Who are they?

A. Mr. Gray and Mr. Combs.

Q. Doesn't Mr. Veasey represent this Delakee Company at Bartlesville?

A. I can't say for sure, but I think he does, however.

Q. Did Mr. Thursday at that time express any dissatisfaction with this sale to Heady?

A. No, he didn't to me.

Q. That was about the middle of April of this year, 1904?

A. It was ten days or two weeks before the office opened here.

Q. Well, the office opened on the first Monday in May, didn't it?

A. Yes, that was right, that would throw it along about the middle of the month, as I say.

Q. I believe you stated that Mr. Thursday said this was a good price, and he thought he would sell it?

A. Yes, we talked the price over, and I thought it was too, at the time.

Q. Did you tell him so?

A. Yes sir.

Q. I will ask you if you didn't tell him you thought it was a very large price at the time?

A. Yes sir, I did.

Q. Thursday thought so too?

A. He thought he had done very well. He said he thought he had done well.

Cross-examination.

By Mr. Veasey: You don't know of your own knowledge anything about the ownership of these respective eighties?

A. Only what he told me.

Q. What did he tell you, that he had sold the north eighty?

A. The north eighty.

Q. Did he say it was his?

152 A. Yes, he said it was his, and the one next to it was his step-grandson's, and the one next to that his wife's.

Q. How did he happen to tell you that?

A. I can't tell you how it came up. I made inquiries about the land, and the parties he had leased to. I inquired about the leasing on it, and he went over it and told me about it.

Q. He told you a week or so after this sale that he intended to file Sam Bob on the eighty next to the old lady, and that the old lady was to have 160 acres south of Sam Bob's?

A. Yes sir.

Q. And that the eighty he had sold was north of the eighty he was going to file Sam Bob on?

A. Yes sir.

Q. Did he tell you why he wanted to file Sam Bob on that eighty?

A. No sir.

Q. That is pretty good oil property, isn't it?

A. Why, yes, I guess so.

The testimony of the following witness was taken at this point out of order, it being on the part of contestee, by consent of the respective parties hereto, in order to allow the witness to catch a train to his home.

On the part of contestee:

HARRY JENNINGS, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Veasey:

Q. What is your name?

A. Harry Jennings.

Q. What is your age?

A. Fifty.

Q. What is your profession?

A. I am United States Commissioner at Claremore, Indian Territory.

Q. Are you acquainted with Mr. William Johnson, of Bartlesville, Indian Territory?

A. I am.

Q. Are you acquainted with his one time partner, Mr. George Keeler?

A. I am.

Q. Were you ever in their employ?

A. I was.

Q. In what capacity?

A. Bookkeeper.

Q. Were you so employed with them during the year 1893?

A. Yes sir.

Q. Are you acquainted with Wallace Thursday, the guardian of the contestee in this case?

A. Yes sir.

Q. Will you examine that instrument, Mr. Jennings, and tell me

whether or not that is your signature as a witness there? (Exhibiting paper to witness.)

A. It is.

Q. In whose handwriting is that instrument?

A. My own.

Q. You will observe the signatures of Johnson and Keeler there; did you see them sign that instrument?

A. Yes sir.

Q. Who signed it?

A. William Johnson.

Q. You will further observe that at the place the grantees in this bill of sale are mentioned Sam Bob is inserted; was that done before the execution of the instrument?

A. I presume so. I have no absolute recollection of it.

Q. It is in your writing?

A. Yes sir.

153 Q. You have never seen the instrument since you wrote it?

A. No sir.

Q. To the best of your recollection it was done at that time?

A. Yes sir, I would say it was.

By Mr. Veasey: We offer this in evidence.

By the Commission: The bill of sale will be received in evidence and marked for identification Contestee's Exhibit "I."

Resumption of Testimony on the Part of the Contestant.

FRED MCDANIEL, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. Fred McDaniel.

Q. What is your post-office address?

A. Bartlesville, I. T.

Q. What is your age?

A. Thirty-three.

Q. Mr. McDaniel, do you know this land in controversy between Ella E. Heady and Wallace Thursday, as guardian for Sam Bob, for an eighty south of Bartlesville?

A. I have understood it—if that is the land, I know where it is.

Q. Do you know any land in that vicinity that you filed upon?

A. I own eighty acres adjoining there on the south.

Q. How long have you owned it?

A. About two years.

By Mr. Veasey: We object to any testimony concerning land not in issue.

Objection noted.

Q. From whom did you purchase it?

A. From Wallace Thursday.

Q. This Wallace Thursday present here?

A. Yes sir.

Q. Was it then enclosed in one large enclosure, and did you cut it off the eighty acres you purchased?

A. Well, there was a fence run through the north side of it. There was a two wire fence run through the north side of it, making a triangle there, and I run a fence down on the south when I bought it.

Q. You measured it off and put a fence on the line on the south side of it?

A. Yes, about on the line.

Q. And that separated the eighty you purchased from the eighty in controversy south of it?

A. Yes sir.

Q. About when did you purchase it from Wallace Thursday?

A. To the best of my recollection it was this month two years ago.

Q. What was the consideration paid for that eighty?

A. I gave him ten dollars an acre for it, I believe.

Q. Eight hundred dollars?

A. Yes sir. My recollection is that this bill of sale was signed by Wallace and his wife both. I think by both of them.

Cross-examination.

154 By Mr. Veasey:

Q. You say that was two years ago?

A. Yes sir.

Q. And your recollection is that the bill of sale was signed by Wallace and his wife also?

A. Yes sir, I think so.

Q. Covered eighty acres of land?

A. Yes sir.

Q. Do you know of your own knowledge, Mr. McDaniel, that that was land they couldn't file on, didn't you know that; that it was over and above their filings, wasn't it?

A. I can't say as to that. I don't know whether it was over their filings or not.

Q. Are you familiar with Wallace's present holdings?

A. No sir, I never paid any attention to it.

Q. Wallace did have the eighty immediately south of yours, did he not?

A. He had a strip in there pretty near to the creek I believe.

Q. Do you know how many acres were embraced in there?

A. No, I don't.

Q. You can't say whether the eighty he sold you was surplus lands or not, over and above what he could take for his family?

A. I don't know.

Q. Pretty good oil property in there, isn't it?

A. Why, generally considered so. I don't know whether it is or not.

Q. How far is the eighty in contest from Bartlesville?

A. If it is the eighty I think it is, it is just a quarter of a mile.

Q. Well, this is the one just south of yours?

A. Well, it is just a quarter of a mile then.

Q. Isn't it true, Mr. McDaniel, that at one time you were offered a bonus of \$2,000 on forty acres of your land?

A. Why, indirectly I did. It came from a reliable source.

Q. And you refused?

A. Yes sir.

Redirect examination.

By Mr. Hastings:

Q. Your land is nearer developed territory, isn't it, at the time the offer was made?

A. Well, it would be just the difference because the development is in Section 12, and that is north in 13.

Q. Your land is that much closer, isn't it; the thickness of the land?

A. Well, that is about the distance.

J. L. MORAN, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. J. L. Moran.

Q. What is your age?

A. Fifty-two.

Q. What is your post-office address?

A. Hazlehurst, Pennsylvania. I am stopping at Bartlesville now.

Q. Where were you during the months of March and April, 1904?

A. I was in and around Bartlesville and Independence.

Q. Do you know Joshua B. Heady?

A. Yes sir.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. Did you know both of them on or about the first day of April, 1904?

A. Yes sir.

Q. Had you known Mr. Thursday prior to that time?

A. A couple of days, something like that; about two days.

155 Q. Had you known Mr. Heady prior to that time?

A. Yes sir.

Q. Do you know this eighty acres of land that is in controversy?

A. Yes sir.

Q. Had you seen it prior to April 1, 1904?

A. About two days before.

Q. You are interested in an oil company?

A. Yes sir.

Q. And you had been about Bartlesville for some time before looking after oil business?

A. Yes sir, I came up to Independence the 9th day of January of this year.

Q. I will ask you if you were present on the first day of April, 1904, when this tract of land in controversy was purchased by Mr. Heady for his wife from Wallace Thursday?

A. Yes sir.

Q. Had you been out to see Wallace Thursday prior to that time?

A. I had been out twice to see him before.

Q. When was your first visit out to see Mr. Thursday?

A. Just two days before the first day of April.

Q. On the 29th, or 30th, of March?

A. Yes sir.

Q. Did you have any talk with him at that time with reference to buying or leasing any part of this land or his other holdings?

A. Yes sir, Mr. Roberts had taken me down there.

Q. What Mr. Roberts?

A. Bruce Roberts. He and another party told me there was an eighty down there to sell. I went down and inquired about it for Mr. Heady.

Q. What did Thursday say to you?

A. He was sick on the bed. I talked to him a little bit. This was two days before the sale. I talked to him about it fifteen or twenty minutes, and he told me that the preacher had been there bothering him for three or four hours and he was tired.

Q. What preacher?

A. This man Evans.

Q. Is Evans connected with an oil company?

A. Yes, he seems to be connected with those people.

Q. Well you know it, don't you?

A. I know it from hearsay.

Q. Did you make Thursday any offer on that first trip?

A. No sir, I only talked to him about selling it, and he said he was going to sell it, the surplus, of land, to the man who gave him the most money for it.

Q. Well, the result of it was that no trade was agreed on?

A. No trade was agreed on at all. He said it was for sale.

Q. What part was for sale?

A. It was my understanding he was the owner of the piece laying next to Fred McDaniel's field.

Q. That was this land in controversy?

A. Yes sir.

Q. And you made no trade that day?

A. No trade whatever.

Q. Did you make him any offer?

A. Yes, I said I would give him \$2,700 for it. I never made him but one offer.

- Q. He didn't take it that day?
A. No sir.
Q. You afterwards went back?
A. Yes sir, with Mr. Heady the next morning.
Q. I thought you said it was two days later?
A. No, it was two days from the time we first started. Mr. Heady went with me the second time I was down there.
Q. Did you make him an offer the first time you were there?
A. Yes sir.
Q. Then you and Mr. Heady went back again?
A. Yes sir.
Q. Now, what conversation was had between you and Mr. Thursday and Mr. Heady at that time?
A. Which time? The first time?
Q. The first time you and Heady were together?
A. We went in there, and I introduced Mr. Heady to him——
Q. Had you told him before that for whom you were trying to buy this land?
A. I don't remember whether I did or not.
Q. Who were you trying to buy it for?
A. For Mr. Heady.
Q. Had you and Heady talked before that about it?
A. Yes sir, he said he wanted to file on some land in that vicinity.
- 156 Q. So you went down there to buy it if you could, for his wife?
A. Yes sir.
Q. You and Heady went the second time?
A. Yes sir.
Q. Did you and Mr. Heady make him any offer for the land in controversy the second time you went there?
A. I don't remember whether we did or not.
Q. You talked so much at so many of those trips that you don't remember the conversations that took place at one or the other?
A. He said he wanted to sell it to the man who would give him the most money.
Q. Did he say anything about his figure?
A. He didn't mention his family.
Q. Did he say he had a wife?
A. I don't remember that he did.
Q. Did he say anything about this boy, Sam Bob?
A. No, I don't think he did. I found out afterwards that there was such a boy.
Q. Did you find out how much land he had?
A. All he spoke about, this eighty up there, and said he would file the boy on the one next to the old woman.
Q. Then he did say something about the boy?
A. Yes, on that line.
Q. Why did he say he wanted to sell this north eighty? Did he say he had reserved it for himself?
A. He didn't say anything about any reserve then.

Q. Why did he want to dispose of it?

A. I suppose it was his surplus land, as far as I know.

Q. Did he say anything about his rights being in question?

A. Yes sir.

Q. At the first time you and Mr. Heady went down there, did you buy it?

A. No sir.

Q. Did you go back again?

A. I talked to him a little while, and he said he wouldn't do anything today, and I said, "Is there any use of my coming back"? That I couldn't spend my time if I couldn't buy it. He said for me to come back the next day.

Q. Did you go back home?

A. Yes sir, went back to Bartlesville and about five o'clock he sent up to me that he would sell it.

Q. Then did you go back?

A. Yes sir, we went back with Mr. Julian.

Q. Is Julian a Notary Public?

A. Yes sir.

Q. Is he the person who wrote the bill of sale which we have introduced in evidence marked Contestant's Exhibit "A"?

A. Yes sir.

Q. You witnessed the bill of sale, I believe?

A. Yes sir.

Q. Do you acknowledge that as your signature?

A. Yes sir.

Q. Well, who all were present when the trade actually took place after you went back that afternoon?

A. Mr. Julian, Mr. Heady and Mr. Fields.

Q. Do you know whether you ever saw this boy, Sam Bob, around there at any time; was your attention called to him?

A. I think he was about there, but I don't remember whether he was in there or out.

Q. Did you have any talk with Sam Bob about it?

A. No sir, never did.

Q. What did Thursday say after you went back?

A. He said he was ready to sell it.

Q. Did you have then a bill of sale drawn up and executed?

A. Yes sir.

Q. This signature is by mark. Did he touch the pen there in your presence?

A. Yes sir.

Q. How much money was to be given for it?

A. \$2,700.

Q. How much was paid down?

A. \$300. I gave him a check for \$300 and Mr. Heady had the option on it, and then before the expiration of the option we paid the other \$2,400.

Q. So the whole \$2,700 was paid?

A. Yes sir.

Q. Did Thursday give any directions about who the checks were to be turned over to?

A. To Mr. Julian, and Mr. Julian was to hold the contract until the other \$2,400 was forthcoming inside of ten days.

Q. And it was paid inside of the ten days?

A. Yes sir.

Q. What did Mr. Heady do in anything with reference to taking possession of this eighty acres?

A. He took possession the next morning and built a fence.

Q. What fence?

A. On the south side.

Q. Was there already a fence on the east?

A. Yes sir.

Q. On the west?

A. Yes sir.

Q. Do you know who owns the eighty acres on the north?

A. Fred McDaniels.

Q. Did you see Heady put this fence along the south side?

A. Yes sir, I helped him put the fence on the south side.

Q. That was done the next day?

A. Yes sir, the next day. We went down there in the afternoon.

Q. I believe you say that Thursday told you that he was going to take the boy's land south of this, and his wife's land still south of that?

A. Yes sir, *after* went up about a month afterwards or three or four weeks afterwards and wanted to buy another eighty of him for a party, he said he didn't want anybody between his and the old woman. He wanted that for the boy.

Q. You went back to purchase still another eighty?

A. Yes sir.

Q. And he said he had the south 160 for his wife?

A. Yes sir.

Q. And the next eighty was for Sam Bob?

A. He said the boy.

Q. And the other eighty on the south of this was it?

A. Yes sir.

Q. And he said he didn't want anyone between the boy and his grandmother, his wife?

A. Yes sir.

Q. That conversation took place some two or three weeks later on?

A. Yes sir.

Q. Did he express himself at that time as being in any way dissatisfied with this trade?

A. He didn't say a word about it. The only thing he said, I was down there three or four days after, he said he hadn't got the money yet. I said there must be some misunderstanding about it. I said haven't you a bank book? He said no, he had a running account. I said I would see about it. I went up and saw Mr. Beatty, the Cashier in the First National Bank of Bartlesville,—

Bartlesville National Bank, I should say,—and he said Mr. Thursday had the money there, and had already let the money out at interest.

Q. Mr. Moran, at that time or at any time afterwards, there was no dispute about where this eighty was?

A. Never has been a question about it.

Q. It has always been understood that it was the north eighty?

A. Yes sir.

Q. And you went there and cut it off the next day?

A. Next day.

Q. Did Mr. Thursday understand that this trade was being made with the wife of the contestant, Mrs. Heady?

A. Yes sir, he spoke about it. He spoke about living over in that country and knowing the folks. He asked Mr. Heady if she was a Delaware and he told him yes.

Cross-examination.

By Mr. Veasey:

Q. You came to the country on the 9th day of January, 1904?

A. Came to Independence, yes sir.

Q. When did you come to Bartlesville?

A. I can't tell without looking; I think in January.

Q. You came to Bartlesville as the representative of an oil company?

A. Yes sir.

Q. And have been taking oil leases?

A. Yes sir.

158 Q. When did you first hear of the Thursday land?

A. The last of March.

Q. Who was your informant?

A. A man by the name of Mesmer.

Q. What did Fields tell you about it?

A. I never saw Mr. Fields until after I had been down there. I didn't know him.

Q. He had never consulted you about it?

A. No sir.

Q. Do you say that you never talked with Mr. Fields about this transaction before you went down there?

A. No sir, I don't know as I ever saw him only on the place.

Q. He had nothing to do about the transaction?

A. It seems he had some arrangements; it seems, I found out afterwards, he told Mr. Thursday he could get more money for it, I believe he told Mr. Roberts.

Q. Fields was working on Roberts and Roberts on you?

A. No sir.

Q. Your first talk was with Roberts?

A. Yes.

Q. What was Roberts doing in Bartlesville?

A. He is a clerk in a dry goods store.

Q. Did he take you there?

A. Yes sir, there was a party told me he could show me the eighty.

Q. You never made any arrangements with Roberts?

A. No sir, not at all. We went down there together.

Q. Did you ask him to take you?

A. I was informed by Mr. Mesmer that Roberts would tell me where the eighty was.

Q. He did so?

A. Yes sir.

Q. What day was that?

A. It was the last of March.

Q. Just the two of you went on this occasion?

A. Yes sir.

Q. You found Wallace Thursday there?

A. Yes sir.

Q. Sick in bed?

A. Yes sir, on top of the bed.

Q. Anyone else there?

A. No sir.

Q. Who mentioned the subject of the purchase of the eighty?

A. I asked him if he wanted to sell it.

Q. What did he say?

A. He said yes, he would sell it.

Q. Did he say why?

A. I don't know. I suppose it was because he had a surplus.
I don't know.

Q. The afternoon of the first visit,—you say it was in the afternoon?

A. The second time.

Q. The first time, what time of day was it?

A. In the afternoon.

Q. On the occasion of that visit you proposed the trade to Wallace, did you?

A. Yes sir.

Q. Did you at that time mention a specific tract of land you wanted to buy?

A. Why, a man generally does.

Q. Did you on that occasion?

A. Certainly, when a man wants to buy eighty acres of land, he certainly would know where it was. Certainly I did.

Q. You had information from other parties that it was the north eighty that was for sale?

A. Yes sir.

Q. And that is the land in contest now?

A. Yes sir.

Q. Did you at that time offer him \$2,700 for it?

A. Yes sir.

Q. Did he accept it on that occasion?

A. He said that he would consider it.

Q. That was at least two days before the first of April that you made that offer?

A. Yes sir.

Q. Had you had any conference with Mr. Heady previous to that first trip?

A. Why, yes; Mr. Heady had spoken to me some time before to get some land to file on.

Q. Did he tell you what he could afford to pay?

A. No, I don't think he did.

Q. Whatever land you were to get for him, the money was to be advanced by your company for that purpose.

A. Yes sir.

Q. And the consideration of his wishes wasn't to depend on that at all?

A. Yes sir.

159 Q. What limit did you have?

A. We took a free hand.

Q. You could pay as much as you chose?

A. Yes, sir, as much as I thought the value of it was.

Q. During all this time you had in mind procuring land for Mr. Heady on which you could get an oil lease to reimburse you for your trouble and expense?

A. Yes, sir.

Q. Before you made this trip to Thursday's house, had any arrangements been made between you and Heady whereby you and your company were to be secured? Were you to be secured in any way?

A. We didn't speak a word about it.

Q. You hadn't made any arrangements with him at that time?

A. No, sir.

Q. You offered to pay that \$2,700 for Mr. Heady to Wallace Thursday before you made any arrangements at all?

A. He said he would secure me so I would be safe.

Q. Did he say how?

A. No, sir, nothing said about how.

Q. You were willing to take Heady's word for it?

A. Yes, sir.

Q. Did you make any inquiries concerning the ownership of the possessory right of the eighty acres you were to buy?

A. I supposed Mr. Thursday owned it.

Q. That was simply rumor, wasn't it?

A. He was in possession of it.

Q. Did you go among the people of the community to see about the ownership of that eighty acres?

A. No, sir.

Q. You assume that because Thursday had possession of it that he was the owner of it?

A. Yes, sir.

Q. And it was on that presumption you acted?

A. Yes, sir. Mr. Fields had told me that Mr. Thursday had been trying to sell it.

Q. Fields had told you at that time that Wallace Thursday had been trying to sell it?

A. Yes, sir. I am a little wrong there. Mr. Fields was down there when we went down there the second time.

Q. Was it on that occasion he told you that Thursday was trying to sell it?

A. Yes, sir.

Q. Let's confine ourselves to the first visit you made; was Fields there on that occasion?

A. No, sir.

Q. And you have already testified that you had no conversation with Fields prior to buying the land?

A. I didn't intend to.

Q. Then you did have a conversation with him?

A. That was the second time I was there.

Q. That was before you purchased it?

A. Yes.

Q. On the second time you went there you did have some conversation with Fields?

A. Yes, sir.

Q. And Fields assured you of the title?

A. He simply told me that there was some other people trying to buy it, and he told me he could get more for it. I was told by Mr. Roberts that the bank people had been trying to buy it.

Q. Fields told you that he told Thursday that he could get more money for it?

A. Yes, sir.

Q. How did Fields know that?

A. I don't know.

Q. You had had no trade with Fields, had you, not directly?

A. No, sir.

Q. How many days intervened between the first and second visit to Thursday's house?

A. Just one day.

Q. Did you take Mr. Heady with you on that visit?

A. The second time, not the first time.

Q. You had Robertson with you the first time?

A. Yes, sir.

Q. Did Robertson take part in the negotiations with Thursday?

A. He introduced me, I believe.

Q. Was that all he did?

A. Yes, sir.

Q. You didn't hear Robertson say to Thursday that he had better sell the land because he had lost his citizenship, or would lose it?

A. I believe he did say he would lose it. At that time I didn't know very much about the laws and conditions here, or the rulings of any kind. There was lots of things I knew nothing about. What I was going to say, there are lots of things—

By Mr. Veasey: I object to any voluntary statements on the part of this witness. Mr. Hastings can bring it out on cross examination.

By Mr. Hastings: He has a right to make any explanations; the attorney has no right to break in on his answers.

A. Speaking about this surplus land and such things as that, there are lots of things in relation to this citizenship business I don't understand at all, and they would say lots of things to me that it was two or three months before I understood what it meant at all.

Q. Didn't Robertson tell Thursday that he had lost, or would probably lose his citizenship in the Cherokee Nation? Didn't he tell him that?

A. I can't say that he did.

Q. You can't say that he did or didn't?

A. No.

Q. Did you make any remark like that?

A. I told him I understood they couldn't hold their surplus land.

Q. And it was on that account that you went there to buy such lands as he had to sell, because he couldn't hold his excess lands?

A. Yes, sir.

Q. And you made that statement to him when you went to purchase it?

A. Yes, sir, and I told him that if I misrepresented anything or he didn't understand I would make it right.

Q. Did anyone else go with you the second time?

A. Mr. Julian in the second afternoon.

Q. That was in the afternoon, wasn't it?

A. Yes, sir.

Q. On April 1st?

A. Yes, sir.

Q. Heady and you went on that occasion?

A. Yes, sir.

Q. And no one else?

A. No, sir.

Q. Had you seen Fields between the first and second visits?

A. No, sir, but Mr. Fields was in the house when we went there the second time.

Q. Now, between the occasions of your first and second visits did you communicate with Heady the consideration for the land should you buy it?

A. Yes, sir.

Q. Did you arrange for the security at that time?

A. Not until after I bought it. The understanding was with Mr. Heady that he would secure me if I bought it.

Q. When you got there the second afternoon you found Fields at the house, did you?

A. Yes, sir, I think he was there.

Q. Who else was there?

A. This boy I think. I am not sure. There were two of them.

Q. Who began the conversation on that occasion, the conversation touching the land?

A. I did.

Q. Wallace was in bed?

A. Yes, sir.

Q. You asked him about the state of his health, did you?

A. Yes, sir.

- Q. You proposed that you would bring him some whiskey?
A. No, sir, I did not.
Q. Didn't you tell him you would send some to him?
A. I told him I would see if I could get him some. He asked me if I could get him some.
Q. That was after you said you would get it for him?
A. No, sir, I don't drink any whiskey, and don't carry it around to anyone.
- 161 Q. He asked you to get him some whiskey?
A. Yes, sir.
Q. And you told him you would try?
A. Yes, sir.
Q. When did the conversation concerning the purchase of the land come up, after the whiskey transaction?
A. It was then.
Q. Did you tell him you had come there to finish that transaction?
A. I told him I came down there to make that deal.
Q. Did you tell him Heady's wife was the one who was getting the land?
A. Yes, sir.
Q. What did Wallace say?
A. He turned around and looked at Mr. Heady and recognized him, and asked him about his folks.
Q. He began at once to ask him about his folks?
A. Oh, he didn't talk very fast.
Q. Wallace was the first to call his attention to his folks?
A. Yes, sir, Mr. Heady said his wife was a Delaware.
Q. Then Mr. Heady was mistaken when he said he began the conversation?
A. He said he was a Delaware.
Q. When Wallace found he was an old friend of Heady's, what did he say?
A. We talked about the deal. I asked him if there was any use of my coming back, and he said to come back the next day.
Q. Did he tell you definitely that he would accept your proposition?
A. No, he said to come back tomorrow.
Q. Fields was there all this time, was he?
A. Fields, I think, was there.
Q. You had never met Fields previously?
A. No, I don't know as I had.
Q. You were introduced to him on this occasion, were you?
A. Yes, sir.
Q. By Mr. Heady?
A. I don't know as it was him.
Q. How did you know it was Fields?
A. I heard his name there I think.
Q. Did Wallace at that time say that he intended to file Sam Bob on the eighty acres?
A. He never mentioned it.
Q. You didn't know anything about Sam Bob at that time?

- A. No, sir.
- Q. Didn't you see him about there?
- A. I saw him. Robertson had told me that this young fellow was talking to him about this eighty acres.
- Q. What young fellow?
- A. This Bob.
- Q. Then you did know of his existence?
- A. Simply run across him in one day.
- Q. What do you mean by running across him?
- A. Well here at the house, this second visit.
- Q. Did you know his relationship to Wallace Thursday at that time?
- A. No, I don't believe I did.
- Q. Didn't know he was a kinsman in any way?
- A. I supposed he was some kind of relation, but not how.
- Q. What land were you trying to buy, Wallace Thursday's land?
- A. Yes, sir.
- Q. You weren't after Sam Bob's land, were you?
- A. I didn't know Sam Bob in the deal at all.
- Q. Had no intention at all of buying Sam Bob's land?
- A. No, sir.
- Q. Did Heady and Wallace talk citizenship on that occasion?
- A. Yes, sir, said his wife was a Delaware.
- Q. Did Heady speak about Wallace probably losing his citizenship?
- A. I don't remember.
- Q. How long were you there that afternoon?
- A. I don't remember. Not very long.
- Q. Drove back to town?
- A. Yes, sir.
- Q. How long were you back before Fields came?
- A. He came in the same afternoon.
- Q. What did he tell you?
- A. He came as I was going upstairs in the hotel, and said Wallace had made up his mind to sell it. I looked at my watch and thought I wouldn't go until morning, and Heady said we had better go, and we went and got Julian and went.
- Q. Who is Julian?
- A. A lawyer.
- Q. Attorney for your oil company?
- A. Yes, sir.
- Q. So you took Julian and Heady and started down there?
- A. Yes, sir.
- Q. Anyone else?
- A. Yes, sir.
- Q. Fields wasn't with you?
- A. I saw Fields when he come to us.
- Q. Fields didn't come down?
- A. Mr. Julian and I went together.
- Q. Heady drove down alone?
- A. I don't know. I didn't see.
- Q. You all didn't go down together?

A. No, sir.

Q. You went first?

A. They went first.

Q. Was they at the house when you got there?

A. Yes, sir, out in the yard.

Q. Then you saw Sam Bob out in the stable there feeding or doing some chores?

A. I can't say.

Q. You had a sort of consultation there then?

A. I did with Mr. Heady.

Q. In regard to the transaction?

A. Yes, sir.

Q. What did you agree on at that time during that consultation?

A. That the property should be made over to Mrs. Heady.

Q. For the \$2,700, did you get your notes and security then?

A. I got them next day. No, pardon me, not until we paid the \$2,400.

Q. Who went into the house first?

A. I can't say.

Q. You all went in about the same time?

A. Yes, sir.

Q. Whom did you find in the house?

A. Mr. Thursday there.

Q. Lying in bed?

A. Yes, sir.

Q. In the meantime Fields got the whiskey, didn't he?

A. I don't know anything about it.

Q. You didn't make any arrangements with Fields to bring whiskey?

A. No, sir.

Q. You didn't see Fields enter into the house with a cup of whiskey?

A. No, sir.

Q. Who brought up the subject of the transaction? On this last occasion?

A. Mr. Julian and me sat down there. I guess they struck a light and lit a lamp, and asked him if he had decided to sell, and he said he did, and then Julian wrote out the bill of sale.

Q. Who was there at that time now?

A. Mr. Julian, Mr. Heady and Mr. Fields, I think, and Wallace.

Q. Wallace in bed sick?

A. Yes, sir.

Q. And Wallace said he was willing to sell?

A. Yes, sir.

Q. Did he say why?

A. He didn't say anything about it.

Q. Didn't he say he might as well sell; he couldn't hold the land?

A. He didn't say anything about that. He said he was willing to take the \$2,700.

Q. All you cared for was that he should have the \$2,700? You didn't care for yourself at all?

A. Well a man would likely care to get value received for his money.

Q. And Julian drew up the bill of sale?

A. Yes, sir.

Q. Did Julian at any time during the drawing up of that bill of sale inquire about the consideration?

A. Yes, sir, all about it.

Q. He didn't know anything about it before?

A. No, sir.

Q. You had no previous conversation with him about it?

A. No.

Q. Had a long drive with him too?

A. Yes, sir.

Q. And didn't speak about the transaction when you were driving with him?

A. I don't know? A man don't always think of just one thing.

Q. When Julian finished writing the bill of sale, did he read it?

A. Yes, sir.

Q. Who it?

A. To all of us.

Q. Where was Wallace when he read it?

A. On the bed.

Q. Where was Julian sitting?

163 A. In a chair in the house on the left hand side.

Q. How far from Wallace?

A. Oh, I suppose ten or twelve feet.

Q. Think Wallace heard it?

A. Certainly he heard it, because he authorized Mr. Julian to put the money in the bank for him, the \$300. He left it in Mr. Julian's hands, the bill of sale and the \$300 that was paid him, and told Mr. Julian that if we didn't give him the other \$2,400 to turn the \$300 over to Mr. Thursday, we did.

Q. After Julian had read the bill of sale, he carried it over to Wallace, did he?

A. No, he took it over to Wallace to sign it.

Q. He was sitting up then?

A. Yes, sir, at the side of the bed.

Q. And touched the pen?

A. Yes, sir.

Q. Who witnessed it?

— Mr. Fields, I believe, and my self.

Q. Mr. Fields and yourself?

A. No, I think Mr. Julian witnessed it.

Q. At any rate Fields witnessed it?

A. I wouldn't say for certain.

Q. You signed your name first?

A. Yes, sir.

Q. And Fields signed shortly after?

A. I can't say which come first.

Q. You say Fields signed it?

A. I can't say positively that he did. My memory isn't clear on that. I don't want to say that I know.

Q. Then you didn't see the other witness to the bill of sale sign his name, did you?

A. I wouldn't say positively.

Q. You wouldn't say Mr. Heady didn't sign it?

A. I can't say.

Q. As a matter of fact wasn't the bill of sale signed by the witnesses right there at the house?

A. Yes, sir.

Q. Both you and Fields signed it right there?

A. I wouldn't say whether Fields signed it.

Q. You followed the reading of the bill of sale carefully?

A. Yes, sir.

Q. You had \$2,700 in it?

A. Yes, sir.

Q. You remember that the bill of sale described the land as being south of the land of Fred McDaniels, don't you?

A. Yes, sir.

Q. You remember that the land to be conveyed to Heady was north of the grantor's do you?

A. Yes, sir.

Q. How do you happen to remember it was south of Fred McDaniels?

A. I knew it was south of Fred McDaniels'.

Q. Then what you know of the bill of sale is from the outside?

A. From the outside and from the bill of sale.

Q. At that time they didn't describe the land with reference to the sectional lines, did they?

A. I can't say.

Q. That was afterwards inserted?

A. No, sir, that has never been touched to my knowledge.

Q. How does it happen that that was interlined then?

A. I don't know anything about that.

Q. You are quite sure that hasn't been touched?

A. Yes, sir.

Q. How do you know?

A. Because we turned it over to Mr. Julian and he put it in the bank.

Q. You don't know whether it has or not?

A. Not to my knowledge, no, sir.

Q. Whose signature is that?

A. Mr. Heady's.

Q. You signed your name under Heady's?

A. Yes, sir, I couldn't have told who the witnesses were.

Q. You have about as clear a recollection of the transaction as of your signing that bill of sale?

A. Oh, no.

Q. You have a clear recollection of other things?

A. Of that I don't remember.

Q. What brand of whiskey was that you sent to Wallace?

A. We sent no whiskey, no brand of whiskey, sir. I don't know any brand of whiskey. I don't know good from bad.

164 Q. Mr. Moran, what you intended to buy was Wallace Thursday's land, wasn't it?

A. Yes, sir.

Q. And if you bought Sam Bob's land, you didn't know anything about it did you?

A. Didn't know anything about it at all.

Q. In regard to the payment of the \$2,700, the bill of sale recited \$2,700, was that paid at the time?

A. We took an option on it for ten days.

Q. What do you mean by that?

A. Took an option to pay \$300 and afterward \$2,400 in ten days.

Q. You were to have ten days in which to back out of your bargain?

A. Or lose \$300.

Q. Then it wasn't an absolute bill of sale?

A. We bought it with the intention of holding it.

Q. Why didn't you put that option in the bill of sale?

A. I guess it is. Isn't it in that bill of sale?

Q. You think that the \$300 proposition was included in the bill of sale, don't you?

A. We took an option. There is a contract? I presume Mr. Julian has the contract.

Q. Was there a contract between you?

A. Between Mr. Thursday and Mrs. Heady.

Q. The contract which Mr. Thursday signed at the time was simply an option?

A. An option for purchasing the property.

Q. You termed it a bill of sale at that time?

A. Yes, sir, a bill of sale.

Q. You drew up two then?

A. No, sir.

Q. You think that was contained in the contract, don't you?

A. Yes, sir.

Q. So if the instrument which is produced here proves to be an absolute bill of sale, it is not the one you witnessed?

A. I think it is; there is no other bill of sale out.

Q. And that one is an option?

A. The bill of sale is an option.

Q. The bill of sale which you witnessed gives you a privilege to back out in ten days or forfeit \$300?

A. Yes, sir.

Q. And the instrument which you witnessed at that time so stated?

A. I don't know whether it so stated. That was the intention at that time, and I told Mr. Julian that in case that we didn't pay the \$2,400 to turn the \$300 over to Mr. Thursday.

Q. Do you mean to say that that bill of sale you witnessed at that time when it was read over you didn't notice that that provision wasn't in it?

A. We certainly took the option, that was the contract.

Q. You mean that there should be a contract evidencing that option contract, do you?

A. Yes, sir.

Q. And if there was no written contract that wasn't your intention?

A. It was my intention to take that property and to pay \$300, and \$2,400 in ten days because I had to wire for the money.

Q. So far as you are concerned it was an additional transaction; you had to get the consent of your people to do it?

A. No, sir, I didn't have to obtain their consent.

Q. Didn't you care to in this case?

A. I didn't need to in any case. In case I recommend it, it generally goes.

Q. You did consult with people away from there?

A. I always consult with them whatever I do.

Q. What would you do if they didn't consent?

A. I think Mr. Thursday would have got his money.

Q. You paid Wallace \$300?

A. Yes, sir.

Q. By check?

A. Yes, sir.

Q. On what bank?

A. Independence bank.

Q. To his order?

A. Yes, sir, and he handed it over to Julian, and Julian was to retain the check until the balance of the money was forthcoming.

Q. Did Julian hold the bill of sale?

A. Yes, sir.

Q. Then the check was to be turned over to Wallace Thursday?

A. Yes, sir.

Q. Together with the \$2,400 more?

A. Yes, sir.

165 Q. Placed in the bank?

A. Yes sir.

Q. Why did you draw the check for \$300 if it was to be placed in the bank?

A. I had no more money.

Q. Why didn't you wait until you got to town and put it in the bank instead of drawing this check and giving it to Wallace?

A. Well, men generally pass money to bind a bargain.

Q. The check was in his possession?

A. Yes sir.

Q. Did he keep it?

A. No sir, he turned it over to Julian.

Q. Did he endorse it?

A. I can't say.

Q. When you went away from that place you had a bill of sale, or your lawyer did?

A. Yes sir.

Q. And Wallace Thursday didn't have anything?

A. Julian had it for him.

Q. Julian was your lawyer, wasn't he?

A. He was his as much as mine.

Q. Julian does all your business?

A. Yes, some.

Q. Doesn't he look after your leases for you?

A. Yes.

Q. What time did you reach town that night?

A. Something after six o'clock.

Q. What did you do in regard to this transaction?

A. Got my supper.

Q. Well, that concerns this transaction very materially. When did you put the \$300 in the bank?

A. I don't know. I went away the next morning.

Q. You don't know what happened?

A. No sir.

Q. That is when your connection with the transaction ended?

A. Yes, sir. I was bound to get the \$2,400, that was all that was necessary.

Q. You say you left the next day?

A. I think the next morning on the train.

Q. Were you with Heady the next morning?

A. I don't think I saw him the next morning.

Q. How long after you went away before you came back?

A. A couple of days.

Q. Come back to Bartlesville?

A. Yes sir.

Q. Was Heady there?

A. I didn't see him until three or four or five or six days after that.

Q. Then the rest of the money was placed to Thursday's credit in the bank?

A. Yes sir.

Q. At that time was it you took Heady's notes to secure the \$2,700?

A. Yes sir.

Q. You took no security for the \$300?

A. I took the security for the whole amount. His word was good for that. The President of the bank, I think at Nowata, said anything that we did with Heady he would stand for.

Q. Then you were to turn back this note when he gave you an oil lease?

A. Yes sir.

Q. In other words, this \$2,700 was a bonus for the oil lease?

A. Yes sir.

Q. He has been out nothing on this?

A. Yes sir, a considerable.

Q. No part of the \$2,700 has been paid by Heady?

A. No sir.

Q. Did Fields go back with you that night you got the bill of sale?

A. I didn't see anything of him.

Q. Have you seen Fields much since?

A. Once in a while I see him.

Q. Has he had any other transactions with you?

A. No sir.

Q. What did you pay Fields for his services?

A. Nothing.

Q. Fields never got anything out of it?

A. Fields said Mr. Thursday was to get \$2,200 or \$2,300. I don't know.

Redirect examination.

By Mr. Hastings:

166 Q. Mr. Moran, at the time of the execution of this bill of sale you say there was \$300 of it paid?

A. Yes sir.

Q. Who was to retain the \$300 for ten days?

A. Mr. Julian.

Q. You have not again read over this bill of sale that was made on that night of April 1st, have you?

A. Yes sir.

Q. Who was to retain this bill of sale for ten days?

A. Julian.

Q. Was he to retain these until you paid the whole of the \$2,700?

A. Yes sir.

Q. Until the whole sum was turned over to Mr. Thursday?

A. Yes sir.

Q. Then it was to be held in escrow?

A. Yes sir.

Q. This was to be an absolute deed and turned into Mr. Julian's hands and held in escrow until the whole sum was paid inside of ten days?

A. Yes sir.

Q. And if it wasn't paid in ten days, he was to have the \$300?

A. Yes sir.

Q. No conditions about the \$300?

A. No sir.

Q. This was the bill of sale made to her that night?

A. Yes sir.

Q. It was to be paid to Mr. Thursday?

A. Yes sir.

Q. And it was paid?

A. Yes sir.

Q. And this bill of sale was turned over to Mr. Heady?

A. Yes sir.

Recross-examination.

By Mr. Veasey:

Q. Was you present when that bill of sale was turned over to Mr. Heady?

A. Yes sir.

Q. When was it?

A. When they paid the \$2,400. I suppose Mr. Julian turned it over to him.

Q. You suppose; you weren't there then?

A. Yes sir, when the \$2,400 was paid.

Q. You weren't present when it was turned over by Julian? You didn't see Julian hand it to Heady?

A. I am satisfied he got the bill of sale al- right.

Q. What satisfied you?

A. Because Mr. Julian is a practical business man, I suppose and my understanding is that he turned it to Mr. Heady.

Q. Then Mr. Julian in the course of his affairs was to turn the bill of sale to Heady?

A. Yes sir.

Q. Did't he get that bill of sale the night it was made?

A. I don't think so. Mr. Julian was to hold all the papers and in case we didn't pay the \$2,400, he was to turn the \$300 to Mr. Thursday.

Q. And the bill of sale?

A. Certainly.

Redirect examination.

By Mr Hastings:

Q. It is your understanding that this bill of sale was turned over to Mr. Heady when that \$2,400 was paid?

A. Yes sir.

Q. But your particular attention wasn't called to it?

A. No sir.

Q. You have been asked a good deal about these conversations and about these several visits down there to Mr. Thursday's and have testified that you remember some and that some you do not, but you talked about this eighty acres of land, didn't you?

A. Yes sir.

Q. You understood up in town that he had this north eighty for sale?

A. Yes sir.

Q. All of your talk and conversation with Mr. Thursday was with reference to this particular eighty?

A. Yes sir.

Recross-examination.

By Mr. Veasey:

167 —. The eighty in contest is very valuable for oil purposes, is it not?

A. It don't look very flattering now.

Q. But you thought it was then?

A. Yes sir, or I wouldn't have paid \$2,700 for it.

Redirect examination.

By Mr. Hastings:

Q. Mr. Heady was to secure you for the \$2,700?

A. Yes sir.

Q. And he was to get his security back when he made a lease on it?

A. Yes sir.

From this point the testimony and proceedings herein were recorded by Giles A. Penick, stenographer.

I, Bert Van Leuven, being first duly sworn, state that as stenographer to the Commission to the Five Civilized Tribes I recorded the testimony and proceedings in the above entitled cause from pages 1 to 32 inclusive of this transcript, and that the foregoing is a true and complete transcript of my stenographic notes thereof.

(Signed)

BERT VAN LEUVEN.

Subscribed and sworn to before me on this 8th day of December, 1904.

[SEAL.]

(Signed)

WILLIAM P. DREW,
Notary Public.

To this point in the hearing of the within cause, the testimony and proceedings were recorded by Bert Van Leuven, stenographer.

BRUCE ROBINSON, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

168 Q. What is your name?

A. Bruce Robinson.

Q. What is your age?

A. 24.

Q. Your Post Office?

A. Bartlesville, I. T.

Q. How long have you lived in Bartlesville?

A. About a year and fifteen days.

Q. Do you know Wallace Thursday?

A. I do.

Q. Do you know J. B. Heady?

A. Yes sir.

Q. Did you know all of these parties I have mentioned on or about the 1st day of April this year?

A. All but Mr. Heady.

Q. Didn't you meet him along about that time?

A. No.

Q. You knew Thursday and Moran?

A. Yes sir.

Q. Did you know where Thursday lived?

A. Yes sir.

Q. Had you known him prior to that time?

A. Yes sir.

Q. Had the fact come to your knowledge in any way that he had any land for sale?

A. Yes sir.

Q. Remember whether he told you or authorized some one to tell you?

A. Sam Bob told me.

Q. Tell you this prior to April 1, 1904?

A. Yes sir.

Q. What did Sam Bob tell you?

I asked Bob if he knew anybody who had some land to lease or sell; he said his grandfather had some right south of Bartlesville.

Q. How long was this before you and Moran went out to see Mr. Thursday?

A. It must have been three months before the 1st of the year.

Q. Had you heard after that time and between the time you and Moran went out there that Thursday had some land to sell?

A. Oh, yes, heard it from a number of parties; John Harlin was trying to get somebody to buy this land for him.

Q. The Thursday land?

A. Yes sir.

Q. You know this 80 acres in controversy?

A. Yes sir.

Q. 80 immediately south of Bartlesville?

A. Yes sir.

Q. Fact of the business is, there was a good deal of talk about it, wasn't there?

A. Yes sir, good deal of talk.

Q. What was your business out there in Bartlesville?

A. I am a clerk there in a dry goods store.

Q. A good deal of talk about the sale of lands and who had land to sell?

A. Yes sir. Bob and the old man traded in the store a good deal. We ordered all of Bob's clothes, and Bob would come in nearly every evening.

Q. Talked frequently about it?

A. Yes sir, very frequently.

Q. Did Bob say what piece of land Thursday had for sale?

A. He said it was his grandfather's, south of town, right north of his place.

Q. Do you know now, with reference to the land in controversy, which tract of land Bob had reference to?

A. Yes sir. Mr. Moran and I drove out there. Mr. Thursday was ill that day and in bed, and Mr. Moran asked him if he had some land to sell. I introduced him to Mr. Thursday. Thursday said he had; Mr. Moran said, "What 80 is it"; he said, "I am going to sell the north 80; I don't want to divide that; I want to keep the two south 80's for them; I want to sell the north 80". Mr. Moran asked him what he asked for it, and he said he didn't know; he said he had been bothered by some pur-

chasers; that they had left twenty minutes ago. Mr. Moran said maybe I had better come back some other day. Mr. Moran said all right; come back tomorrow. In the conversation, he said the man who paid the most money got the land.

Q. He said he had that for sale?

A. Yes sir, the north 80; said he didn't want to divide the two from the old lady.

Q. Are you sure about what his wife was to have—the 160 on the south?

A. Maybe so, but he made the statement he wanted to keep the woman's together.

Q. In other words, he wanted to keep Sam Bob's and his wife's adjoining.

A. Yes sir, adjoining. He was going to sell the north 80.

Q. Did he say what he was going to do to get lands for himself?

A. No sir.

Q. Anything said then about his citizenship?

A. Yes sir. Bob told me he was on the doubtful list, and that he would lose his rights; that was why he wanted to sell; Wallace jumped on to Sam Bob about this; that is what Sam told me.

Q. Wallace is his step-grandfather?

A. Yes sir, they call him his grandfather.

Q. There wasn't any trade consummated that evening with him, when you and Mr. Moran was there?

A. No sir.

Q. Do you know when it was you and Mr. Moran went out?

A. I judge it was about the last of March.

Q. Of this year?

A. Yes sir.

Q. You didn't go back the next time?

A. No sir, I didn't go back the next time.

Q. You don't know, then, whether or not Mr. Moran did go back the next time?

A. No sir, I don't know.

Q. Has Thursday ever told you since that time whether or not he sold that land?

A. No sir, I never had any conversation with Mr. Thursday about that; only Sam. Sam told me the trade was made and the money was paid in the bank.

Q. Sam Bob?

A. Sam Bob.

Q. Have you had any talk with Sam since Wallace ran down and filed Sam on the south 80?

A. No sir.

By Mr. Veasey: Objected to for the reason that this is wholly irrelevant and immaterial.

By the Commission: Objected noted.

Q. Switched the cut and filed on the north 80?

A. No.

Q. Sam Bob never claimed the north 80, did he?

A. No sir.

Q. Wallace Thursday never claimed it for him?

A. No sir, not that I know of. Sam never claimed that himself.

Q. At the time you were talking to Bob, didn't Bob tell you he was going to take the 80 south of this is controversy?

170 A. Yes sir.

Q. And his grandmother's still south of that?

A. Yes sir.

Q. Thursday tell you that also?

A. Yes sir, when we were out there.

Q. Thursday stated that he was going to sell to the man who gave the most money?

A. Yes sir. Said Sam's 80 was between his and his wife's, so Sam Bob's 80 would be between the two; south of the 80 in controversy.

Q. Did you meet any preacher as you went down there, you and Moran?

A. Don't think we did.

Q. Do you know whether Mr. Evans was down there, Baptist preacher, at this place?

A. We didn't meet him.

Q. Do you know what Preacher Thursday referred to when he said a preacher had bothered him a good deal?

A. Don't remember.

Q. Didn't say the preacher was bothering about religious matters. Trying to get oil lease?

A. He said a preacher had been there three or four times, bothering him about his land; said he wasn't feeling very well.

Q. Do you know whether Mr. Evans is connected with the Delokee Oil Company?

A. I don't know, but I heard he was.

Q. That is the general understanding in Bartlesville?

A. Yes sir, I understand he was in with these fellows. I guess he must be, because he met me in Muskogee yesterday and wanted to know what I knew about the case. I told him to wait until I got on the stand.

Q. They sent him back yesterday for fear he would be an injury?

A. He said he had business in Muskogee.

Q. He didn't come over?

A. No sir.

Q. How long after you heard in a general way of this trade having been consummated, didn't you?—

By Mr. Veasey: Objected to for the reason that the evidence is immaterial and irrelevant.

By the Commission: Objected noted.

A. Yes sir, I heard of it frequently trade had been made.

Q. I believe you said Sam Bob told you?

A. Yes sir. Thursday didn't.

Q. Did Thursday talk to you any after that at all?

A. No sir.

Q. Sam Bob said Thursday had sold his land, did he?

A. Yes sir, had sold to Mr. Moran.

Cross-examination.

By Mr. Veasey:

Q. Whose store do you work in at Bartlesville?

A. Carmen & Runken; they own it.

Q. You are employed there still, are you?

A. Yes sir.

171 Q. You say Wallace Thursday and his step-grandson are customers of that store?

A. They were at that time, but they are not now.

Q. You say the old man and Sam come frequently before that?

A. Yes sir.

Q. How long *had* you been at Bartlesville?

A. A Year the 17th of last month.

Q. When did you first catch the oil fever?

A. Shortly after I landed in Bartlesville.

Q. When did you have the first conversation with Sam Bob relative to this land?

A. Sometime before the first of the year; I don't know just what date it was.

Q. What did he tell you on that occasion?

A. I asked Sam if he knew anybody who had land to sell or lease; he said "Yes", his grandfather had a place to sell.

Q. That was in January?

A. Yes sir.

Q. For whom were you working then, so far as interest in oil companies are concerned—you were not taking leases yourself?

A. No sir. I thought I would get on to some good lease and tell some oil man about it and get a part of it.

Q. Sam told you on this occasion that the old man had a piece he would be glad to sell.

A. Yes sir, said his grandfather was on the doubtful list and that he was going to lose his rights.

Q. On that account, he was willing to sell his interest?

A. Yes sir.

Q. That he had 80 near town?

A. Yes sir, right south of town.

Q. That was Wallace's 80 he wanted to sell?

A. Yes sir.

Q. What did you do in regard to that?

A. I went around and talked with Mr. Moran about it, sometime after that. There was one fellow named John Harlin wanted to buy it for him. I tried to bet somebody to buy it for him. Harlin drove out to see Wallace *the* sometimes himself.

Q. Your first visit to Wallace was when you went there with Mr. Moran?

A. Yes sir, my first visit.

Q. And after you failed with Harlin, you went to Mr. Moran regarding the proposition?

A. Yes sir.

Q. How did you happen to go to Moran?

A. I saw a fellow named Mesmer and he knew Mr. Moran in business; Mesmer brought Mr. Moran around to see me.

Q. You know Bill Fields, don't you?

A. Yes sir.

Q. How long have you known him.

A. I have seen him several times but never really knew his name.

Q. Knew him anyway before Sam Bob told you about this place?

A. No sir.

Q. How shortly after that conversation in which Sam Bob told you of the old man's endeavor to sell before Fields talked to you about it?

A. I don't remember Fields talking about it.

Q. Fields never had spoken to you about this land?

A. I don't believe he has.

Q. You took Moran down there?

A. He took me; he had the buggy.

Q. Had you had any conversation with Thursday himself between the time you had the talk with Sam Bob and the time you went down with Moran?

172 A. No.

Q. Simply knew him by sight?

A. Yes sir, but I was acquainted with Sam, the boy.

Q. When you reached Thursday's house, did you find anybody there other than Wallace?

A. Just he and his wife.

Q. His wife is insane, isn't she?

A. I don't know it. When we left, we spoke about her acting as if she was absent-minded.

Q. Simply took it for absent-mindedness?

A. Yes sir.

Q. Who brought up the purchase of that land the evening you were there?

A. I introduced Mr. Moran to Mr. Wallace and told him Mr. Moran was looking for land.

Q. You seated yourself at the head of the bed, didn't you?

A. I think I sat over on the bed, right across from him.

Q. Positive you didn't seat yourself at the head of the bed?

A. Don't think I did.

Q. Wore your hat in the house?

A. Don't remember that; I am not in the habit of doing that.

Q. You say Moran mentioned the subject of the purchase to Wallace? You told him this was the man to buy the place?

A. I told him Mr. Moran wanted to buy.

Q. They discussed the sale?

A. Didn't exchange but a few words.

Q. Every time they did, Moran mentioned the amount he would give?

A. Said he would give more than anybody else.

Q. No certain sum?

A. No certain sum but more than anybody else.

Q. The land they were discussing was the north 80, the land in contest in this case?

A. Yes sir.

Q. You didn't return with them on occasion of the second visit, did you?

A. No sir, I didn't.

Q. What royalty are they going to carry you on this lease?

A. None at all.

Q. Your going out, then, was just a deed of charity?

A. Yes sir; had that much time to spend.

Q. The people in the neighborhood of Bartlesville are prone to do that?

A. Yes sir, some of them.

Q. You didn't receive anything from Mr. Moran for your services in going?

A. Not a cent.

Q. Have not received anything from Mr. Moran or anyone else — account of putting them on to the proposition?

A. Not a cent.

Q. Do all of your work this way in regard to your oil propositions?

A. Not in the habit of it.

Q. Why, you remember, in this case?

A. Because the case isn't settled yet.

Q. When it is settled, you are to get something?

A. I expect so.

Q. Know you are?

A. Not positive of it.

Q. If this matter is settled in Heady's favor, what are you going to get?

A. I cannot tell you.

Q. Get something aren't you?

A. No, not certain at all.

Q. Just hoping you will?

A. Yes sir.

173 Q. That is the reason you refused to talk to Evans at Muskogee yesterday?

A. No sir.

Q. Then, if Heady loses this case, you are sure that you will not get a thing?

A. I don't know; I can't say.

Q. Less likely to get something then than if he wins it?

A. It looks that way.

Q. Then, you are a disinterested person in this case; have no interest at all?

A. I guess so.

Q. That is the end of your connection with the affair, isn't it?

A. Yes sir.

Q. It was after that that Julian came in there?

A. I don't know anything about Julian being connected; having interest at all.

Redirect examination.

By Mr. Hastings:

Q. Mr. Robinson, you were up there and there was no definite promise made you at all with reference to this matter?

A. No sir.

Q. You are now under no promise?

A. Under no promise at all.

Q. Neither Mr. Heady or Mr. Moran are under any obligation to pay you anything?

A. No sir.

Q. You felt like if you had enabled them to make a trade, that might possibly be valuable to them, they might pay you for it?

A. That is it exactly.

Q. Under no obligation to pay you a cent?

A. No sir, only my witness fees down here and my expenses. Mr. Moran said he would pay my expenses.

Recross-examination.

By Mr. Veasey:

Q. You know preacher Evans, don't you?

A. Well acquainted with him.

Q. You had a conversation with him two or three days ago in connection with this case?

A. I didn't; only at Muskogee when he wanted to know what I knew about the case.

Q. Haven't had any conversation with him recently at Bartlesville?

A. No sir, none in regard to this case.

Q. Never told him down there within the last three or four months that Moran owed you something on account of this case, and hadn't paid you?

A. No sir.

Q. Positive of that?

A. Yes sir.

Q. Did you have anything settled about Wallace Thursday on the evening of this visit to his house, while you and Moran were there; when you had your hat on?

174 A. I don't believe I did; no sir.

Q. Didn't you tell Wallace Thursday that evening that he was going to lose his citizenship, and better sell at the best price he could get.

A. I told him some said he was on the doubtful list and liable to lose his citizenship.

Q. You told him Sam said that?

A. Yes sir.

Q. Felt it your duty to tell him what Sam said?

A. Yes sir.

Q. Why?

A. Because I felt that Mr. Moran would give him what it was worth.

Q. Didn't you think that would influence him to sell?

A. I didn't know.

Q. You were there for that purpose?

A. Yes sir, if he wanted to sell it.

Q. That is why you used that expression, isn't it?

A. Well, I don't know.

(Witness dismissed.)

TOM EDWARDS, being first duly sworn, and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. Tom Edwards.

Q. What is your Post Office?

A. Bartlesville.

Q. What is your citizenship? Citizen of the United States?

A. Yes sir.

Q. What is your age?

A. 49.

Q. You know Wallace Thursday?

A. Yes sir.

Q. Do you know Mr. Heady?

A. Yes sir.

Q. Do you know this land that is in controversy, Mr. Edwards?

A. Yes sir.

Q. How long have you known it?

A. Well, I have known the land, I suppose, for 12 years you might say.

Q. Have you known it for the last three or four years?

A. Yes sir.

Q. Do you know whether or not Thursday sold it to Heady; the land in controversy?

A. I cannot say that I know that. I only know that Mr. Wallace Thursday told me he had sold to Mr. Heady.

Q. When did he tell you this?

Mr. Veasey: Objected to for the reason that it is hearsay;
175 Mr. Thursday being here to testify in regard to that matter.

By the Commission: Objection noted.

A. I cannot state the date.

Q. Was it some time this past spring?

A. Yes sir.

Q. Do you know whether it has been since the 1st of April of this year?

A. Sometime in April; I cannot say just when.

Q. Mr. Thursday tell you what he got for it?

A. Yes sir.

Q. How much?

A. \$2,700.00.

Q. Is any part of this land in cultivation?

A. Yes sir.

Q. How much?

A. Well, 15 or 18 acres.

Q. Did you live on the place last year?

A. No sir.

Q. Live on it this year?

A. Yes sir.

Q. Did you have a rental contract with Mr. Thursday upon it this year?

A. Yes sir.

Q. After it was sold to Heady, did you make a rental contract with Heady?

A. Yes sir.

Q. And that is how you know it was sold; because you were tenant upon it?

A. Yes sir.

Q. Did both Heady and Thursday tell you of this trade?

A. Yes sir.

Q. You know whether this 80 acres was fenced or cut off apart from the rest of the farm south of it?

A. Yes sir.

Q. Who run the fence along the south border of this cutting off the 80 from it on the north side?

A. Mr. Heady.

Q. How long was that after you heard of his having purchased from Thursday, about that time?

A. About that time, I cannot just state the date.

Q. And you were Thursday's tenant this year?

A. Yes sir.

Q. You cultivated this 15 or 18 acres upon this tract?

A. Yes sir.

Q. And Thursday informed you he had sold to Heady?

A. Yes sir.

Q. Do you know how much land Thursday and his wife or Sam Bob has south of this, beyond?

A. No sir, I cannot say.

Q. Have they as much as 80 and 160?

A. That is my understanding; that that is what they are holding.

Q. Do you know for whom they are holding it?

A. Well, nothing more than the 160; that is the old lady's.

Q. How about the 80 north of that?

A. That is the one Heady—that is the 80 we leased.

Q. Who was to have this 80 that was sold to Heady?

A. My understanding is that that is Sam Bob's.

Q. You heard they filed Sam on it?

A. Yes sir.

Q. You heard that since this filing?

A. Yes sir.

Q. That is how you got that information?

A. Yes sir.

176 Q. But Wallace told you he had sold this north eighty to
Heady?

A. Yes sir.

Cross-examination.

By Mr. Veasey:

Q. When did you go on this place, Mr. Edwards?

A. 1st day of March.

Q. The present year?

A. Yes sir.

Q. That is the land in controversy in this case, isn't it?

A. Yes sir.

Q. You knew, as a matter of fact, when you went on that place
that Wallace Thursday claimed that 80 for Sam Bob at that time?

A. I cannot say that I did.

Q. Didn't your contract with him so state, your rental contract?

A. No sir, I don't think so.

Q. Sure of that?

A. In fact, I don't know that it stated either way; it was only just
a contract between I and Mr. Thursday, stating that it was his land.

Q. You mean to say, Mr. Edwards, that Wallace Thursday never
told you he claimed that north 80 for Sam Bob?

A. I don't know that he did.

Q. Did he tell you that any time during the month of March of
the present year?

A. I don't remember; I came on the place the 1st day of March.

Q. Have you ever heard him say that he claimed that for Sam
Bob, the 80 you are on?

A. I have since.

Q. Certain improvements were put on the place in March of this
year, weren't they?

A. Yes sir.

Q. Built a stable there this year?

A. Yes sir.

(Witness dismissed.)

WILLIAM JOHNSON, being first duly sworn and examined, testified
as follows:

Direct examination.

By Mr. Hastings:

Q. Your name is William Johnson?

A. Yes sir.

Q. What is your Post Office?

A. Bartlesville.

Q. Your age?

A. 44.

177 Q. Mr. Johnson, how long have you lived in the vicinity of Bartlesville?

A. 22 years.

Q. You are a citizen of the Cherokee Nation by adoption?

A. Yes sir.

Q. What is your business?

A. Banker and farmer.

Q. You are President of the Bartlesville National Bank?

A. Yes sir.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. Know J. B. Heady?

A. Yes sir.

Q. Know J. L. Moran?

A. Yes sir.

Q. I will ask you, Mr. Johnson, if there has been any money put on deposit in the Bartlesville National Bank, at Bartlesville, placed there to the credit of Wallace Thursday?

A. Yes sir, Wallace Thursday has a certificate of deposit for \$2,700.00.

Q. Have you made any examination to see who placed it there to his credit, do you know?

A. Mr. Julian, I think, deposited the money there.

Q. C. C. Julian?

A. Yes sir, for credit of Wallace Thursday.

Q. Do you remember about the time it was done?

A. I think it was done early part of April, if I recall aright.

Q. Of this year?

A. Yes sir.

Q. After this money was deposited there by Mr. Julian, did you have any talk with Mr. Thursday with reference to it?

A. I had a talk with him in reference to it when he came in to see if the money was there for him.

Q. Did he come to make inquiry as to whether the money was on deposit or not?

A. Yes sir.

Q. What did he say at that time?

A. Wanted to know if the money was there.

Q. And you told him it was?

A. Yes sir.

Q. What did he say the money was for, and that was the conversation at that time?

A. He told me he sold that farm down there—80 acres—to Heady.

Q. How *how* much he got for it?

A. \$2,700.00.

Q. Say where the 80 acres was with reference to Fred McDaniels?

A. I think I asked him what 80 it was and he told me the 80 right south of Fred McDaniels.

Q. You know this is the land in controversy?

A. I have understood so; only from what I have heard.

Q. What else was said about it?

A. Well, he wanted to know what interest we would allow him on the money by leaving it there. I told him we would allow him 4% interest if left there for six months; he said all right, he would leave it there, and took a certificate of deposit.

Q. And you gave him a certificate of deposit?

A. Yes sir.

Q. Did he express himself as being dissatisfied with the trade made with Heady?

178 A. He didn't express himself as being dissatisfied. He said Mr. Combs and Evans was trying to get him to go back on the trade.

Q. Who is Mr. Combs?

A. He lives there in Bartlesville; lessor of claims.

Q. Is he connected with the Delokee Oil Co.

A. Not to my personal knowledge; I understand he is.

Q. Is Mr. Evans connected with it?

A. From general talk, yes sir.

Q. Mr. Evans, that Baptist preacher that lived up there?

A. Yes sir.

Q. Quit preaching and went in the oil business?

A. He has gone in the oil business; don't know whether he quit preaching or not.

Q. He said that Mr. Combs and Mr. Evans were trying to get him to go back on this trade, did he?

A. Yes sir.

Q. What did he say about it? Say he was going to do it?

A. He had been coming to ask my advice about selling his land two or three times; several parties from Vinita were trying to buy it; a fellow named McManus had been trying to buy it. He came to me and said he wanted to get me to help to get this land from Wallace down there; said Wallace didn't stand any show of being put on the rolls and would be thrown out, and he had better get something out of it, and he wanted me to help get it for him. I told him I would not do anything of the kind. And Wallace came to me and spoke to me about it and wanted to know what about it; I advised him to hold the land and not sell it. When he came back in there, he said he sold it. That is how I came to ask him about it. Said Mr. Combs and Mr. Evans were trying to get him to go back on the trade. I said, "Wallace, you sold this land, did you sign a bill of sale?"; he said "Yes sir." I said "You knew what you were doing when you signed it, did you?" and he said he was sick in bed when they came there. I said You knew it was a bill of sale and what it was, and he said Yes sir. Now I advise you—my advice is to stay with it. You have got a fair price for the land; a great deal more than I would give for it, if I wanted the land, and you better stay with the trade; I don't think you could get out of it anyway.. That is the substance of the conversation.

Q. Then, he left this \$2,700.00 on deposit there in your bank taking a certificate of deposit drawing 4% interest?

A. Yes sir.

Q. And it is there today?

A. Yes sir. In fact the cashier told me he came in there just a day or two ago; he left the certificate there in the vault, and he wanted to know if it was there in the vault. The Cashier told him yes, it was there.

Cross-examination.

By Mr. Veasey:

Q. Mr. Johnson, on the occasion of Thursday's coming to see you at the Bank of Bartlesville in regard to this transaction, did you advise him to go to Charlie Julian's and get the bill of sale?

A. No sir.

Q. Did Thursday ask if the money was there?

A. Yes sir.

Q. In reply to that, didn't you tell him, Mr. Johnson, that the larger check, for \$2,400.00, had been sent to St. Louis for collection?

A. That, was the first time he came in there and talked with Mr. Boyd about it.

Q. You never told him the check was sent to St. Louis for collection?

A. No, Mr. Boyd may have told him.

Q. You didn't tell him to go to see Julian about the bill of sale?

A. I do not remember it.

Q. How long have you been in the neighborhood of Bartlesville?

A. 22 years.

Q. Were you in the mercantile business between the years of 1890 and 1900?

A. I was in the mercantile business in the year '84 to '96.

Q. So engaged individually or partnership with someone else?

A. Mr. Keeler—firm of Johnson & Keeler.

Q. Trading the entire time?

A. Yes sir.

Q. Do you remember the occasion of the first payment of Delaware principal money?

A. Yes sir.

Q. About what year was it?

A. I think it was in December, 1891.

Q. You are acquainted with Wallace Thursday?

A. Yes sir.

Q. His wife, Mary Thursday?

A. Yes sir.

Q. Acquainted with Sam Bob too?

A. Yes sir.

Q. Were you present at the place of that payment?

A. Yes sir.

Q. Where was it?

A. Lynn Creek.

Q. How far from Bartlesville?

A. About thirty miles.

Q. At the time of that payment, was Mary Thursday and her husband, Wallace Thursday, customers of your storage?

A. Yes sir.

Q. Run an account with you?

A. Yes sir, run two accounts. Delaware account, under the name of Mary Anson; that was her name on our Delaware ledger.

Q. This Mary Anson, so described, is identical with Mary Thursday?

A. Yes sir.

Q. The account was run in her name?

A. Yes sir.

Q. Was she owing you anything at the time of that payment?

A. Yes sir.

Q. Have you looked at your books recently about that transaction?

A. Yes sir.

Q. With that in view, how much she owed you at that time?

A. Either \$380.00 or \$580.00; I think \$580.00.

Q. What was the amount, if you remember, of the first payment made in 1891?

By Mr. Hastings: Comes now attorney for contestant and objects to this line of examination of this witness because it is not proper cross examination, in as much as none of the matter now being inquired into by the attorney for contestee was developed by
180 contestant in the examination in chief, and, under the rules, the contestee on cross examination is confined to an examination of the material things brought out in the direct examination.

By Mr. Veasey: In reply to the objection, contestee will call attention of the attorney for contestant to the fact that the Arkansas Statutes permits cross examination upon points not brought out in direct examination.

By Mr. Hastings: To this statement, attorney for contestant desires to challenge this statement, because the laws in force in this country do not permit it, except where the witness is made the witness of the party who desires to examine them as to new matter.

By the Commission: Notes.

A. I think about \$500.00.

Q. Do you know of your personal knowledge that Mary Thursday and Sam Bob received their per capita payment at Lynn Creek in 1891?

A. Yes sir.

Q. Did you at that time receive in payment of your account any part of the money that came to them by virtue of that payment?

A. I don't exactly remember that point, but the probabilities are that all of that money was turned over to me that they drew.

By Mr. Hastings: Objected to unless you know, Mr. Johnson.
By the Commission: Noted.

Q. Have you examined your books in regard to the transaction?

A. I have examined my books and my books show that the account was paid in full.

Q. At that time?

A. At that time.

Q. Do your books further show that a memorandum or due bill was issued to Sam Bob at that time?

A. No sir, my books didn't show that.

Q. Do you know of your own personal knowledge that such due bill was issued to him or Mary Thursday?

Q. I don't remember that transaction; I am not clear on that point. Just as I said before, the probability is it was.

Q. You cannot say then that a due bill was issued by the firm of Johnson & Keeler to the end and that there was due Sam Bob or Mary Thursday \$400.00 from your firm?

A. My impression is that Wallace Thursday deposited this whole check with me when he was over there at the payment, as that was about the way things was done at that time, as we did a
181 banking business in connection with our mercantile business. The books show that his account was paid in full, and that he turned the check over there, and that I give him a due bill when we got home for the difference.

Q. The difference between the money arising from the amount due Mary Thursday and Sam Bob and the account which stood against Mary Thursday, was represented by a due bill which you gave Wallace Thursday after going back?

A. The probabilities are that it was, but I cannot find a record of it; the book we kept the record of I cannot find.

Q. Do you remember positively that you received the check that Wallace Thursday had, representing Sam Bob's payment of money at Lynn Creek?

A. Only by looking at my books.

Q. Would it refresh your memory by saying that on that occasion you told Wallace Thursday he better not carry that money to Bartlesville; better leave it with you—he might be robbed?

A. Probably I did, sir.

Q. Didn't he on that occasion draw just enough money from you to get back?

A. He might have.

Q. What was the time of the second Delaware payment?

A. August 1893.

Q. Two years later?

A. Yes sir.

Q. Have you looked at your books recently—in the meanwhile did Mary Thursday or Mary Anson, as she was then described, do any purchasing at your store?

A. Yes sir.

Q. Upon the credit basis?

A. Yes sir.

Q. Have you examined your books to ascertain whether something was due on your books from her at the time of the second payment?

A. Yes sir.

Q. State that to the Commission.

A. At the time of the second payment \$780.63 was due the firm of Johnson & Keeler.

Q. Do you know the items or the principal item of that \$780.00?

A. Yes sir. July 25, 1893, they are charged on her account with farm \$400.00.

Q. What was the amount, if you remember, of the first Delaware payment per capita?

A. About \$500.00.

Q. What was the amount of the payment, per capita, at the second payment?

A. Nearly the same, I think—\$490.00; something like that; right around \$500.00.

Q. Did your books show this seven hundred and some dollars paid?

A. Yes sir, paid on the 11th day of August.

Q. That was the date of payment?

A. Yes sir.

Q. Do you know of your own knowledge whether that was paid partly of Sam Bob's money?

A. Yes sir, Mary Anson drew one-third for herself and one-third for Sam Bob, her grandson.

Q. Part of this \$700.00 due your firm, of which \$400.00 was on account of a certain farm, was paid by Sam Bob's payment money?

A. Yes sir.

Q. You had, then, sold a farm to Mary Thursday, or Sam Bob, previously to that?

A. Yes sir.

182 Q. Do you remember the date of that approximately?

A. I think July 25, 1893, was when I sold the farm; I think that was when I sold it.

Q. Was the consideration \$400.00?

A. \$800.00.

Q. Were you fully paid for the farm at that time?

A. Yes sir, I think I was, but my books didn't show the transaction. My understanding is the way I have given it.

By Mr. Hastings: Objected to unless you know it, Mr. Johnson.
By the Commission: Noted.

A. —I am not positive of it.

Q. You know this Mr. Johnson—you know \$400.00 at that time, you would have kept track of it.

A. Yes, if it hadn't been paid, it would have been shown on the books. The other \$400.00 was paid at the time the charge was made.

Q. In other words, August 11, '93, you had paid \$800.00 for that place?

A. Yes sir.

Q. You can testify positively on that point?

A. Yes sir, but as to how paid, I don't recall.

Q. You don't remember where the other \$400.00 came from?

A. No sir; I think it came from a due bill that we held from Mary Anson's other payment.

Q. That is your impression?

A. Yes sir.

Q. Examine this bill of sale and see if this is your signature to that, Mr. Johnson?

A. Yes sir, that is my signature and Mr. Keeler's, the firm signature at that time.

Q. That was the place you sold Mary Thursday and Sam Bob on the 25th of July, 1893?

A. Yes sir.

Q. You received \$400.00 on that August 11?

A. Yes sir.

Q. And on August 11 you had already been paid the other four hundred dollars in the same way?

A. Yes sir.

Q. As a matter of fact, don't you know that Sam Bob and Mary Thursday were without means except that arising from the payment?

A. Yes sir.

Q. And you can testify positively that unless they got the other four hundred from the payment, they had no other means with which to pay it?

A. Not that I know of.

Q. Do you know where the place you sold on that occasion is with reference to the section lines, that is approximately?

A. Yes sir.

Q. Do you know where Fred McDonald's 80 is?

A. Yes sir.

Q. That part of the place you sold them?

A. Yes sir.

Q. The 80 south a part of the place you sold them?

A. Yes sir. That is the part the house was on.

Q. It also embraced the 80 south of that—three 80's?

A. Yes sir.

183 By the Commission:

Q. One of the 80's you sold him that time lay directly south from McDonald's place?

A. Yes sir. Fred McDonald's, and this 80 in controversy and another 80.

Q. Fred McDonald's 80 a part of that?

A. Yes sir.

Q. 80 south of the McDonald 80 and the 80 south of that?

A. Yes sir, majority of the 80, maybe full 80 south of that?

Q. Was the full 80 in controversy a part of the land you sold at that time?

A. Yes sir.

(Witness dismissed.)

STEPHEN A. MILLER, being duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. Stephen A. Miller.

Q. What is your age?

A. 42.

Q. Are you a Cherokee-Delaware?

A. Yes sir.

Q. Your Post Office?

A. Delaware.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. Do you know Mr. Heady?

A. Yes sir.

Q. I want to know whether you have ever bought any land of Wallace Thursday recently?

A. Yes sir.

Q. When did you buy it?

A. I don't exactly remember the time; the latter part of February or March.

Q. Of this year?

A. Yes sir.

Q. How much did you buy of him?

By Mr. Veasey: Contestees object to any interrogation of this witness concerning land not in controversy, being wholly irrelevant and immaterial.

By the Commission: Noted.

A. 20 acres.

Q. Where was the 20 acres?

A. It lays on the east part right east of Mr. Wallace Thursday's house, the land joining Mr. Johnson's land.

Q. How far from this land in controversy?

184 A. It is about one-half mile, I guess.

Q. What direction?

A. A little bit southeast.

Q. Southeast of the land in controversy?

A. Yes sir.

Q. You bought 20 acres of it?

A. Yes sir.

Q. What did you pay him for it?

A. Three dollars per acre.

Q. \$60.00?

A. Yes sir.

Cross-examination.

By Mr. Veasey:

Q. When did you buy that?

A. I don't just remember; I think the latter part of February or March.

Q. Of this year?

A. Yes sir; I have a bill of sale here.

Q. Who signed the bill of sale?

A. Thursday.

Q. And his wife?

A. I don't remember that; I don't think she signed it; I think Mr. Thursday only.

(Witness dismissed.)

C. L. HARNAGE, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. Your name is C. L. Harnage?

A. Yes sir.

Q. What is your age?

A. 36 or '7.

Q. Your post office?

A. Talala.

Q. Do you know Wallace Thursday, guardian of Sam Bob, the contestee here?

A. I know Wallace Thursday, yes sir.

Q. How long have you known him?

A. Along in February, I suppose.

Q. You bought any land of him this year?

A. Yes sir.

Q. When?

A. I think it was the last day of February or the 1st of March.

By Mr. Veasey: We object to the introduction of this witness in regard to lands not in controversy, because same is irrelevant and immaterial.

185 By the Commission: Noted.

Q. You say you bought some land from Wallace Thursday?

A. Yes, sir.

Q. Where was that land?

A. It was south of the town down on the creek.

Q. How far south of Bartlesville?

A. I don't know. I think about one mile and a quarter.

Q. Know where Wallace Thursday himself lives?

- A. Yes, sir, I think I do.
Q. What direction from there?
A. Southwest.
Q. How far?
A. Probably two or three hundred yards, I should think.
Q. Who did you buy it of, Wallace Thursday?
A. Yes, sir.
Q. He sign the bill of sale?
A. Yes, sir.
Q. What did you pay him for it?
A. \$530.00.
Q. For how much?
A. 40 acres.
Q. Is there a house on it?
A. Yes, sir.
Q. What kind of a house?
A. A little white frame house.

Cross-examination.

By Mr. Veasey:

Q. Do you know of your own knowledge that the 40 acres that you bought of Wallace Thursday was in excess of allotments for himself and wife and boy, Sam?

A. No, sir, I don't know.

Q. You don't know what lands he had after selling the 40 acres to you, do you?

A. No, sir.

(Witness dismissed.)

J. P. SUDDERTH, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Tillotson:

Q. State your name?

A. J. P. Sudderth.

Q. Your post office?

A. Nowata, I. T.

Q. What is your occupation?

186 A. Physician and surgeon.

Q. Acquainted with J. B. Heady?

A. Yes, sir.

Q. Acquainted with Wallace Thursday?

A. Yes, sir.

Q. I will ask you if you ever had a conversation with Wallace Thursday regarding the land in controversy here between him and Heady.

A. I did.

Q. When and where was that?

A. In May sometime. I don't remember exactly the day; about the middle of May.

Q. Where at?

A. At Nowata.

Q. State what that conversation was.

A. Well, he told me that he sold Mr. Heady 80 acres of land, and that Mr. Heady paid him \$3,700.00 for the land, and he said he intended to let Mr. Heady have the land when he sold to him, but some preacher—Evans, I believe he said his name was, persuaded him to file on the land after he sold to Mr. Heady.

Cross-examination.

By Mr. Veasey:

Q. How long have you known Mr. Heady?

A. 12 years.

Q. How long have you known Wallace Thursday?

A. Five or six months.

Q. Where did you meet him?

A. Saw him in Nowata.

Q. Made it your business to see him?

A. No, sir.

Q. The first time you had ever seen him?

A. No, sir.

Q. Where had you seen him before?

A. Tahlequah.

Q. On what occasion?

A. I don't know what occasion; I was down here to file.

Q. Just about the time Heady filed, wasn't it?

A. I don't know when he filed.

Q. You saw Wallace Thursday here?

A. Yes, sir.

Q. Did you meet him on that occasion?

A. I saw him at the hotel.

Q. Who called your attention to him?

A. Well, I was with some other parties, and I heard them say there was Wallace Thursday.

Q. What interest was that to you at that time; why was Wallace Thursday different from any other man?

A. No difference, only he was there.

Q. You knew Heady at that time and knew of this transaction?

A. Yes, sir.

Q. And you had no interest in knowing Wallace Thursday?

A. No, sir.

Q. You made it your business to see him at Nowata?

A. I saw him and met in conversation with him.

Q. He accosted you?

A. No, sir.

187 Q. You approached him on this identical subject?

A. No, sir. I approached him and asked him if he was having a law suit, and he said something about some administration papers.

Q. Then what did you say?

A. Then the conversation came up about this Heady matter.

- Q. Who brought up that conversation?
A. I don't remember.
Q. You brought it up, didn't you?
A. I told you I don't remember.
Q. You knew Heady?
A. I did.
Q. Had a certain interest with him?
A. No, sir.
Q. Wallace Thursday probably broached the subject to you?
A. I told you I don't remember how the subject came up. I stopped at the drug store and he was at the back end.
Q. Do you make it a practice of accosting freedman and talking in the back of that drug store?
A. No, sir.
Q. What did he say.
A. He said he sold Mr. Heady some land.
Q. What did you say?
A. I asked him for what and he said \$2,700.00.
Q. Then what did you say?
A. Well, I don't know what was said next.
Q. Then the conversation ended didn't it?
A. No, it didn't end.
Q. Well what was said further?
A. I asked him sometime during the conversation if he wasn't having trouble over it, and he said he was; he said when he sold the land to Mr. Heady he intended to let him have it, but through the influence of this preacher Evans, he persuaded him to file on it after he sold.
Q. Then you told Heady about that?
A. I did.
Q. You are quite positive, Doctor, that you didn't begin the conversation?
A. I told you I don't remember.
Q. Do you remember much of what occurred on that occasion?
A. I remember some.
Q. You remember your condition at that time, too, don't you?
A. Yes, sir.
Q. You were little under the influence of liquor?
A. No, sir.
Q. And you told Heady all about it?
A. I did.
Q. Come down here to testify, didn't you?
A. I did.
Q. Because of your friendship for Heady?
A. I did.
Q. You were going to him to get him committed in some way?
A. No, sir.

Redirect examination.

By Mr. Tillotson:

Q. You were subpoenaed down here, were you?

A. Yes, sir.

188 Q. The first time you saw Wallace Thursday was here at Tahlequah?

A. Yes, sir.

Q. Who was with him?

A. Preacher Evans, I spoke of.

Q. Arming him around here while here?

A. Yes, sir.

Q. With him every time you saw him?

A. Yes, sir.

Q. Do you know Jim Gray?

A. No, sir.

(Witness dismissed.)

C. C. JULIAN, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. Your name is C. C. Julian?

A. Yes, sir.

Q. Your postoffice is Bartlesville?

A. Yes, sir.

Q. You are a practicing attorney?

A. Yes, sir.

Q. What is your age?

A. Thirty years.

Q. Know J. L. Moran?

A. Yes, sir.

Q. Know J. B. Heady?

A. Yes, sir.

Q. Know Wallace Thursday?

A. Yes, sir.

Q. How long have you been in Bartlesville?

A. It will be three years next April.

Q. Were you there, then, last March and April of 1904?

A. Yes, sir.

Q. Do you know where Wallace Thursday lives?

A. Yes, sir.

Q. Are you a notary public also?

A. Yes, sir.

Q. And were on the 1st day of April, 1904?

A. Yes, sir.

Q. I will ask you if you were called to go out to Wallace Thursday's house on or about the 1st day of April, 1904?

A. Yes, sir.

Q. You remember about what time in the evening you went there?

A. I think it was between three and four o'clock; possibly it was a little later.

Q. You don't remember the exact time?

A. No, sir.

Q. I will ask you to examine that instrument, which is contestant's Exhibit "A," and say whether or not you prepared it and it is in your handwriting?

A. Yes, sir, I drew that up at Thursday's residence.

189 Q. It is signed by "X" mark. Who wrote Wallace Thursday's name to it?

A. I did.

Q. Did he sign that "X" mark, or touch the pen?

A. Yes, sir, he touched the pen.

Q. Authorize the signature?

A. Yes, sir.

Q. Prior to the time he authorized the signature to that instrument, had the trade been agreed upon with reference to this 80 acres of land?

A. Yes, sir.

Q. How much was Mr. Thursday to get for it?

A. Well, Mr. Moran had been down there before he came to me and the trade was consummated at that time, and I was going to prepare the papers.

Q. There had been some talk between them before with reference to the trade?

A. Yes, sir.

Q. And when you went in this time, they told you what the trade was?

A. Yes, sir.

Q. What did they tell you to do in the presence of Mr. Thursday?

A. They agreed upon having this bill of sale drawn up and the bill of sale was to remain in my hands for 10 days until the balance of the purchase money, \$2,400.00, could be paid over.

Q. You were to hold it in escrow, then, were you?

A. Yes, sir.

Q. How much was paid that night?

A. \$300.00.

Q. The purchase price was \$2,700.00?

Q. The rest of the purchase money was to be paid within ten days?

A. Yes, sir.

Q. And if it were paid within ten days, you were to turn this bill of sale over to Heady?

A. That was the understanding.

Q. Between Heady and Thursday that night?

A. Yes, sir.

Q. What did Thursday tell you to do with this \$300.00, if anything, that night?

A. Well, he was laying on the bed, claiming he was sick, and

when we started away, I turned around and asked him if he hadn't better put that money in the bank, and he said he expected it would be best; I told him I would act as agent and put it in the bank for him.

Q. Did you?

A. Yes, sir; he got the check and I endorsed as agent and put it in the bank to his credit.

Q. You received the \$2,400.00 later on?

A. Yes, sir.

Q. Put that to his credit also?

A. Yes, sir.

Q. And turned over the bill of sale to Heady?

A. Yes, sir.

Q. You are sure it was understood there which 80 was being sold, Mr. Julian?

A. Yes, sir. The 80 acres just south of Fred McDaniel's 80.

Q. You know the 80 acres in controversy. Is it the same 80?

A. Yes, sir.

Q. Was anything said while you were there as to where he was going to take same Bob's land and where he was going to take his wife's, Mary's?

A. Yes, before I drew up this bill of sale, Thursday made the statement that his wife's home place was south of Bob's place, not next to this 80, acres in controversy was on the extreme north, and he wanted to keep Bob's place and the old lady's place together, so they would join.

Q. And this 80 acres he was selling was the 80 acres he had had for himself, isn't it?

A. He made that statement; it was my understanding it was his land.

Q. That he had the 80 immediately south of this for Sam Bob?

A. Yes, sir.

Q. And then he had the 160 south of that for his wife, Mary?

A. Yes, sir.

Cross-examination.

By Mr. Veasey:

Q. You say Wallace said he wanted to keep the old lady's place and Sam's place together?

A. Yes, sir.

Q. Why did he say that?

A. I don't know; I think we got back home about seven o'clock and talked about everything under the sun.

Q. Why did he want to keep these places together?

A. He didn't say; he said he wanted Sam Bob's place and the old lady's place to join.

Q. That was the reason he sold the north 80?

A. Yes, sir.

Q. You know as a matter of fact, Charley, that the north 80 already was considered Sam Bob's land?

A. No, I don't. Everybody I have talked to said it was Wallace Thursday's land.

Q. If that was the case, why did he state that he wanted to keep the two together, all together?

A. He owned about three or four hundred acres in there, known as the Wallace Thursday tract of land; a big body of land.

Q. Charley, you are Moran's attorney, aren't you?

A. No, sir, I am the Test Oil Co.'s attorney.

Q. He represents them and you are their attorney?

A. Yes, sir.

Q. And it was in that capacity that you visited Wallace Thursday's house when that bill of sale was drawn up, wasn't it?

A. Yes, sir.

Q. When did you first hear of the 80 in controversy being for sale?

A. I don't know. It was a day or two prior to Moran's coming up and getting me in the buggy; I think I talked with Heady about it.

Q. What did he say?

A. Said he had a chance to get some land down there and was going to take it and get an oil lease on it.

Q. Going to give an oil lease to the——

A. Give oil lease to Test Oil Co.

Q. Say at that time how much he was willing to give for the place?

A. No.

Q. Was that your first intimation that Wallace Thursday wanted to sell that 80?

A. Yes, sir.

Q. Then, two days later, Moran and Heady and Fields and yourself went down there?

A. No, sir, Mr. Heady and Fields were at Thursday's house when Moran and I got there.

191 Q. Who came for you and Moran? Did Fields come for you and Moran and tell you Thursday was willing to sign the bill of sale.

A. I don't know. I don't think Fields came to town after us. There was three of us went down there and I do not remember who was driving.

Q. Go in a surr-y?

A. Yes sir, two seated hack.

Q. Then when Heady testifies he went with Fields and you went with Moran, in separate rigs, he is mistaken,—in separate rigs?

A. No, I don't think he is.

Q. Then, there wasn't a two-seated rig and you are mistaken?

A. It is possible I have made a mistake; I went with Moran, and I went down and Fields and Heady were there when I got there.

Q. And you didn't see them in town before you left?

A. No, I was in the office and Moran came after me.

Q. What did he say?

A. Said he wanted me to go out and write some papers for him.

Q. That all?

A. Said he wanted to hurry; it was getting late.

Q. On the way he talked to you about the trade?

A. Yes sir, said he made the trade.

Q. Tell you how much he was going to give for the place?

A. I don't remember that, he did; he might have said something about it.

Q. But he did say what 80 it was?

A. Yes sir.

Q. And he told you Heady was to buy it?

A. Heady's wife was to buy it.

Q. Discussed the sale in such a way that you would be ready to draw up the bill of sale when you got there?

A. No, I had to ask questions after I got there.

Q. Heady and Fields there when you reached the house?

A. Yes sir.

Q. You were together in the room where Wallace was?

A. Yes sir.

Q. Didn't you stand outside and have a conversation with Heady and Moran a few minutes?

A. I don't think I did; they all went in the house. Heady and Fields were standing in the yard.

Q. And the four went in together?

A. We all went in together.

Q. You are quite sure Moran and Heady didn't go to the barn and have a short conversation?

A. Didn't state anything about it.

Q. Do you know about that?

A. No.

Q. Will you say they did or didn't?

A. Will say I don't know.

Q. Who did you find in the room when you entered it?

A. I think I went in just behind Fields; Thursday was sick, laying on the bed, and Fields explained he was sick and asked if he couldn't do something for him and picked up a fan and fanned him.

Q. How about the whiskey?

A. If there was any whiskey there I didn't see it; I wish I had.

Q. Was Sam Bob in the house?

A. Sam Bob was in the yard, and I am under the impression he was in the house; yes, I am quite sure of it, I think he *say* next to me.

Q. And the terms of the bill of sale had been pretty well determined upon when you started to write the bill of sale?

192 A. Yes sir.

Q. And Wallace had said he was willing to sell for \$2,700.00?

A. Yes sir.

Q. And then you proceeded to draw up the bill of sale?

A. Yes sir.

Q. Did it occur to you at any time during the evening or the time before that there might be some question about Wallace Thursday having the right to sell that 80 acres?

A. No sir.

Q. You didn't investigate?

A. No.

Q. You knew about Sam Bob's being a minor, didn't you?

A. No, he looks big enough to be a man.

Q. Isn't it your custom in law practice to be a little careful of minors?

A. I didn't pay any attention. Sam Bob looks like he might be 25 years old.

Q. Do you make it a practice in cases of this nature to go in without investigation?

A. Yes, the deal was all completed before I went down and all I was to do was to draw up the instrument.

Q. You didn't consider it your duty to inquire into the title?

A. No sir.

Q. Just draw up the bill of sale?

A. Yes sir.

Q. You knew what 80 acres was being sold?

A. Yes sir.

Q. And that it was Wallace Thursday's 80 acres?

A. He said so.

Q. Was the description in reference to the sectional lines inserted in the instrument before its execution or afterwards?

A. We talked about that and they couldn't give the legal description of the land, so we described it by the improvements around it; it was agreed that I could insert the legal description after we got home.

Q. Did you do that?

A. Yes sir.

Q. You say in this bill of sale that the land it so conveys was south of Fred McDaniel's 80.

A. Yes sir.

Q. And north of the grantor's land?

A. Yes sir.

Q. And the grantor was Wallace Thursday, wasn't he?

A. Yes sir.

Q. You caused Heady and Moran to become witnesses to this instrument?

A. Yes sir.

Q. Heady was acting as his wife's representative?

A. Yes sir, I suppose so.

Q. Didn't he tell you he was acting as agent for his wife?

A. Yes sir.

Q. And you permitted him to witness an instrument conveying land to his wife, when he was her agent?

A. He didn't say he was her agent; at that time nothing was said about that.

Q. You knew he was, for she was being represented in some manner.

A. I didn't consider that she needed to be represented. A woman

to get 80 acres of land and have somebody else pay for it, a pretty good thing.

Q. You paid three hundred dollars at the time?

A. Yes sir.

Q. And the understanding was that you were to hold both the \$300.00 and the bill of sale until ten days, within which time if \$2,400.00 additional was paid, the bill of sale was to be given to Heady and the check to Thursday?

A. No sir; the understanding was that I was to hold the bill of sale 10 days and if the \$2,400.00 was not paid, Heady could go back on the deal.

Q. Then you gave \$300.00 to Thursday?

A. Soon as I put the money in the bank to the credit of Thursday.

Q. You gave him a check that night?

A. Yes sir.

Q. Moran signed a check for \$300.00?

A. Yes sir.

Q. Made payable to Thursday here?

A. I think it was.

Q. Why didn't you leave it with him?

A. I don't know why I didn't. After we started home, I suggested to him that Thursday better put that in the bank, if he was willing.

Q. Why?

A. I don't know.

Q. The check couldn't be used by anyone else.

A. It might be.

Q. If the check was payable to his order, nobody could use it?

A. Yes sir.

Q. As a matter of fact, you didn't mean to give Thursday any show at all?

A. No sir. I did it by Thursday's consent.

Q. Got Thursday's consent?

A. I come back and asked him if he hadn't better put it in the bank.

Q. What reminded you about that?

A. I don't know.

Q. Out of consideration for Thursday, you rushed back there and took the check payable to his order and deposited it in the bank?

A. When we gave Thursday the check, he said he didn't have a place to put it, and he said he would hide it around there, and go down the next day and get it cashed. After we started home, I mentioned to the rest of the party perhaps we'd better get the check and have it deposited in the bank. I asked Thursday and he said all right.

Q. How did it happen that you didn't ask for the check immediately?

A. I don't know.

Q. It was sort of an after-thought?

A. Yes sir.

Q. You deposited the check to his credit that night?

A. Yes sir, I think I did.

Q. After banking hours, wasn't it?

A. Yes sir.

Q. Went in the bank and deposited it anyway?

A. Yes sir, I went in; Mr. Boyd was there and he gave me a duplicate receipt for it.

Q. When did you deliver that bill of sale to Heady?

A. I don't know; some time after the \$2,400.00 was paid over.

Q. Sure it was after the \$2,400.00 was paid over?

A. I think it was.

Q. Wasn't it before?

A. I don't think—

Q. As a matter of fact, you know you delivered it before the \$2,400.00 was paid?

A. I don't think I did.

194 Redirect examination.

By Mr. Hastings:

Q. That bill of sale was read over to Thursday that night before he authorized his signature to it?

A. Yes sir.

Q. Explained and understood by him?

A. Yes sir.

Q. It was his intention then to convey and your intention to write in there, conveying from Wallace Thursday, the 80 acres of land now in controversy, which is the 80 south from the Fred McDaniel tract of land?

A. Yes sir, that was the 80 acres.

Q. No dispute about that?

A. I don't think so.

Q. This was the only 80 talked of?

A. That was the only 80 talked of.

Q. You think that Sam Bob was seated in there during the time this transaction was taking place?

A. I don't think he was when we first went in there, but he was afterwards, I think.

Q. Was he in there when this bill of sale was read over to Thursday, you think?

A. Well, I am not clear about it, but I think he was. Think he sat next to me all the time.

Q. That is your best recollection of it?

A. Yes sir.

Recross-examination.

By Mr. Veasey:

Q. Did you hear anything said that evening about Wallace's citizenship?

A. No sir, not that I recollect of.

Q. Didn't hear Wallace say that he sold that land because he could not hold his citizenship?

A. No? I don't remember hearing that.

Q. That might have been said, tho?

A. Yes sir, it might.

By the Commission:

Q. You say Sam Bob was in there. Are you sure he was in there?

A. The more I think about it, the more sure I am he was there, because I sat on the stool right next to the south window, and they had an organ on the east side of the house. Sam Bob came in there, and I had heard him play music up town, and I asked him to sit down and play a piece of music on the instrument. He sat by the organ and the light was very poor; I asked him to get more light that I could write the bill of sale.

Q. Did you explain to him what transaction was going on?

A. I don't think I did.

Q. Did anyone?

A. The bill of sale was read over a couple or three times. I wrote a few lines and we were talking about it.

195 Q. How long do you think Sam Bob was in the room?

A. I think he was in there all the time with the exception of the first few minutes when I went in there. When I went in there, he was not there. He was in the yard when I first got to the house.

Q. Are you sure he was in there all the time after he first came in there?

A. I will not say he was in there all the time.

Q. Was he in there when you left?

A. Yes sir, that is my recollection of it. He was at the house when I left. He just stepped out of the house when I left on the east porch, is my recollection of it.

Redirect examination.

By Mr. Hastings:

Q. He could not help but knowing what was going on if he was around there?

A. We discussed the matter for an hour or more; write and then read three or four lines. Got in a discussion about the description of the land, and it was agreed to insert the description.

Q. And you did that, did you?

A. Yes sir.

Q. You inserted the description of the 80 that he told you to insert?

A. Yes sir.

Q. And it was the 80 that you otherwise attempted to describe by language?

A. Yes sir, 80 acres just south of the Fred McDaniel 80.

Q. You had some information that described the Fred McDaniel 80?

A. We had a map and could figure it.

Q. And then you figured it and inserted it?

A. Yes sir.

Recross-examination.

By Mr. Veasey:

Q. You say that description was inserted after he signed it?

A. My certificate there where this erasure is made, we made to cover the smoke house.

Q. The description there is an interlineation, isn't it?

A. Yes sir.

Q. And you have certified that all the interlineations were made before final execution?

A. Yes sir, that was done.

Q. And that was not the case?

A. All the interlineations that are on there, it was agreed I should insert that legal description.

Q. And you took the responsibility of making the interlineation there when you had already certified that it was done at the time of the execution of the instrument?

A. Yes sir, I suppose so.

By the Commission:

196 Q. Why didn't you leave a blank to put in that description, if you anticipated doing so?

A. I don't know how that came. We were in a dark room and I had to get a light, and had just a little book.

Redirect examination.

By Mr. Hastings:

Q. There was no dispute but what it was to be this 80 acres south of Fred McDaniel's?

A. No sir.

Q. This land in controversy is that 80?

A. Yes sir.

Q. That was the 80 Wallace Thursday sold to Heady that night?

A. Yes sir.

Recross-examination.

Mr. Veasey:

Q. Do you know Bill Fields?

A. I know of him.

Q. You don't know what interest he had in hanging around Thursday's place?

A. No sir; I think he is a tenant of Thursday's.

Q. How did it happen that he was there on all occasions?

A. I don't know.

Q. Didn't receive anything from Moran, did he, for it?

A. Not that I know of.

(Witness dismissed.)

Contestant rests.

Testimony on Behalf of Contestees.

JOSHUA B. HEADY, being recalled, testified further as follows:

Direct examination.

By Mr. Veasey:

Q. You are the husband of Ella Heady, the contestant in this case?

A. Yes sir.

Q. And her agent?

197 A. Yes sir.

Q. You were present at Dawes Commission this morning when I tended to your attorney \$2,700.00, in payment of the amount you had paid Thursday for the land in controversy?

A. Yes sir.

Q. I said it was \$2,700.00?

A. Yes sir, you said it was \$2,700.00.

Q. And I was in the act of counting it?

A. Yes sir.

Q. You asked what I was doing it for?

A. Yes sir.

Q. I told you I wanted to pay you that \$2,700.00, didn't it?

A. Yes sir.

Q. And you said you would not take it?

A. Yes sir, I did.

Q. When did you get that bill of sale, Mr. Heady, when it was delivered to you?

A. I don't know what time it was; I might have taken it that night.

Q. Night of the trade?

A. Yes sir.

Q. As a matter of fact, you did, didn't you?

A. No, I won't be clear, but I taken that bill of sale with me I fixed up a note, Monday afterwards I think it was, possibly Saturday night, I fixed up a note with Wallace Buford, security, giving my note to Moran for \$2,700.00.

Q. What time of the week?

A. I think it was Saturday night.

Q. What day did this sale occur?

A. Friday evening; Saturday I fenced the land, and Saturday evening, I think I fixed up that note.

Q. When you gave the note, you got the bill of sale didn't you?

A. Yes sir.

Q. And you went to Coffeyville just about that time?

A. Yes sir, I did and made arrangements at the 1st National Bank; made a note for \$2,400.00 with W. B. Arnold for security, so as if I didn't get the money from J. L. Moran that I would have it ready at the time I agreed with Wallace Thursday.

Q. You did have the bill of sale at that time?

A. Yes sir, showed it.

Q. Didn't wait until the 10 days expired or until the \$2,400.00 was paid?

A. No sir, I didn't. I took this bill of sale with me.

Q. Then it was not the term of the contract that the bill of sale was not to be turned over when the \$2,400.00 was paid?

A. I think it was Saturday, I am not certain, I made my note with Wallace Buford for security, telling him I would bring him additional securities. I taken this bill of sale and went to Nowata and got W. M. Arnold and went to the 1st National Bank at Coffeyville and told Mr. Reed what I wanted; that I wanted to borrow \$2,400.00 and we made a note for \$2,400.

Q. You didn't tell any one during that time that you had both the bill of sale and the money, and that Wallace Thursday could go to hell?

A. No sir.

Q. Didn't tell that to Fields, did you?

A. No sir; I did not.

Q. Did you make any inquiry from outside sources as to the ownership of that 80 acres there?

A. Yes sir, I knowed of Mr. Thursday for some time; I knowed he married a Delaware woman, and that he had this land there; that he had more land than he could hold, and I felt that I had the right to buy this land.

198 Q. That was the extent of the inquiry you made?

A. I would not say that was the extent.

Q. Give me the extent of it.

A. I had been there something like two or three weeks in the neighborhood. I made several inquiries for land; I wanted to get a piece of land for a home close to where I could get a school.

Q. Did you ask anyone as to who improved the 80 acres you proposed to buy?

A. Mr. Buford's wife told me her first husband built the house there and sold it to Keeler & Johnson, and Keeler & Johnson sold it back to Wallace Thursday.

Q. Did you go to Johnson & Keeler and inquire as to that?

A. No sir, I didn't.

Q. You were willing to take Mrs. Buford's word that sale had been made to Wallace Thursday?

A. Why, sure.

Cross-examination.

By Mr. Hastings:

Q. While you were out there, during any of your investigation, was there any dispute but that Wallace Thursday owned this land?

A. Everybody in Bartlesville says he transacts all the business that his wife is crazy and that Sam Bob is a minor; and everybody trades with him; everybody recognized him as being the guardian for these people.

Q. They recognized this as belonging to Wallace Thursday?

A. Yes sir.

Q. He had kept for his own allotment had he?

A. Yes sir.

Q. And took an allotment for Sam Bob south of this?

A. Yes sir and said he filed him there.

Q. And after you for your wife purchased this 80, then this man Evans and Delokee Oil Co. ran around and induced Wallace Thursday to attempt to go back on this trade, and to file Sam Bob on this 80 as well as file in the 80 south?

A. Yes sir; they brought him down here this man Cole and Mr. Gray and preacher Evans; there was two behind him and one beside him.

Q. Were you down here while they were down here?

A. Yes sir, I was down here.

Q. Did they guard him all the time?

A. Yes sir, they guarded him, and I think they was sleeping with him.

Q. Stayed with him all the time?

A. Yes sir, stayed here with him all the time; the first thing I found he had gone back on the train. Thursday told me a while ago that he aimed to carry out this contract; that preacher Evans had overpersuaded him.

Q. Where did he tell you that?

A. Told me that at Nowata; I talked an hour with him and he said that was the only mean trick he ever done.

Q. Did Wallace come up and tell you about it?

A. Yes sir, he come up and told me about it.

Q. He came up and began the conversation?

A. No sir, I said he didn't.

Q. Didn't you make a proposition with Wallace Thursday
199 not long ago that you would see that the Delokee got that lease on the 80 acres if he would see that your wife was filed on this 80 acres of land?

A. No sir, I didn't ever.

Q. Didn't make that statement to him at Nowata?

A. No sir, I didn't; he told me at Nowata he would come down here and file Sam Bob on the 80 agreed to, if the Dawes Commission would let him.

Q. Now he has filed on the 80 he told you he was going to file Sam Bob on?

A. Yes sir, he has filed pending citizenship.

Redirect examination.

By Mr. Veasey:

Q. Do you know Bettie Martin?

A. I do not.

Q. Do you know whether there is any contest pending on the 80 that is south of the 80 in controversy?

A. I do not.

(Witness dismissed.)

By Mr. Veasey: At this point, we desire to pay to the Commission, rather, give them a certified check for \$2,700.00, to be held and paid over to the contestant in this case at such time as the Commission deemed proper.

By the Commission: The following is a copy of the instrument referred to:

No. —.

"TAHLEQUAH, I. T., 10/8/1904.

First National Bank.

Pay to the order of Commission to the Five Civilized Tribes (\$2,700.00) Twenty seven Hundred Dollars.

(Sgd.)

WALLACE — THURSDAY.
his
mark

Witness:

MABEL F. MAXWELL.
JAMES A. VEASY."

Endorsed across the face of the instrument: "Certified October 8, 1904, First National Bank, by L. C. Ross, Cashier."

The Commission for the present declines to accept the instrument offered upon the conditions stated. The tender of the contestee will be noted for further consideration.

The contestee desires that the Commission refer to allotment contest cases, Nos. 799 and 926, wherein Wallace Thursday is 200 contested by Jesse L. Harnage and Betsy Martin with reference to the 80 acres tract immediately south of the 80 acres in contest, and which is alleged to have the prospective allotment of Sam Bob, the contestee in this case.

WALLACE THURSDAY, being duly sworn and examined, testified as follows:

Direct examination.

By Mr. Veasey:

Q. State your name?

A. Wallace Thursday.

Q. How old are you, Wallace?

A. 56 years old.

Q. Where do you live?

A. I live a mile and a half below Bartlesville—just a mile I believe.

Q. Who is Sam Bob, Wallace?

A. Grandchild of Mary Thursday.

Q. Who is Mary Thursday?

A. She is a registered Delaware.

Q. Is she any kin to you?

- A. She is my wife.
Q. That is some kin, isn't it, Wallace?
A. I don't know; I never had any thought about your wife being your kin folks.
Q. At any rate, you are married to Mary Thursday?
A. Yes sir.
Q. You are legal guardian of Sam Bob, aren't you?
A. Yes sir.
Q. When were you appointed, Wallace, legal guardian?
A. I cannot tell you just exactly when.
Q. You remember when you made this alleged sale to Mr. Heady, don't you?
A. Yes sir.
Q. Was it before or after that, to the best of your recollection?
A. It was after that.
Q. Do you know where the 80 acres is in contest between Sam Bob and Heady?
A. I filed him on the 80 next to McDaniels.
Q. You filed him on the 80 next to Fred McDaniels?
A. Yes sir.
Q. Who filed on the 80 south of where you filed Sam?
A. I filed the homestead there.
Q. Who filed on the land south of where you filed?
A. That is my woman's 160.
Q. When you filed for yourself and for Sam Bob and for the old lady, did you have any other land?
A. I have got some little fractions.
Q. Little 10 acres tracts?
A. Yes sir.
Q. Where did you get the land that you filed Sam Bob on?
A. I bought it with his principal money.
Q. When, to the best of your recollection?
A. I can't hardly tell exactly when it was now; 12 or 13 years ago.
201 Q. Who did you buy it from?
A. From Mr. Johnson & Keeler.
Q. Where was the first payment made, Wallace, the first Delaware payment of principal money?
A. Over on Lynn Creek.
Q. Did you see Mr. Johnson there at that time?
A. Yes sir.
Q. Did you draw Sam's money at Lynn Creek on that occasion?
A. Yes sir.
Q. Did you draw Mary Thursday's money too?
A. Yes sir.
Q. How much did you get, about?
A. I think it was four hundred and something.
A. A piece?
A. Yes sir. It was \$460.00. What we got was \$400.34.
Q. A piece?
A. Yes sir.

Q. You did not draw any money, did you Wallace?

A. No sir.

Q. Drew money for Sam and Mary?

A. Yes sir.

Q. At that time had you been trading with Keeler & Johnson?

A. Yes sir.

Q. Did you owe them any money?

A. Yes sir, I expect I did.

Q. Do you remember that you owed him any?

A. Yes sir, I bought a team and wagon before that payment.

Q. What became of the money you drew for Sam Bob and Mary Thursday at Lynn Creek?

A. I turned it over to Johnson at Lynn Creek and he said "You better let me take that money with me, because you are liable to get robbed on the road." I thought it a very good thing. I said I want enough to take me home; he said "Take ten dollars."

Q. And you left the money with Johnson, did you?

A. Yes sir.

Q. You came back to Bartlesville?

A. Yes sir.

Q. Did you afterward get any sort of receipt or paper to show you paid him the money?

A. No sir, I turned the money over to him and he give me ten or twelve dollars.

Q. When he got back, did he give you any paper then after you got to Bartlesville?

A. No, he told me he had the money there in a safe, and that he had a place that Wheeler had bought and went back on, and he said it will be a mighty good thing for you to buy this place, and when the boy is a man grown, you will have something to show for what became of his money. I studied a while and thought it would be a good idea, because I saw so many children grow up without a home.

Q. Then what did you do Wallace?

A. I paid him the four hundred dollars on the place.

Q. Money he had at that time?

A. Yes sir.

Q. How much did you pay for the place?

A. Paid him four hundred dollars of Sam's money, and the old lady's money I used improving the place, building houses and digging wells, and about six months I drew the second payment.

Q. How much did you draw then for each of them, Wallace?

A. Well, it wasn't but three or four hundred, I think, but Johnson said it was five hundred, and he is a scholar and knows; I can't read and he has got it on his books.

Q. When you got the second payment of money, did you finish paying the eight hundred dollars?

A. Yes sir.

Q. Did he give you a bill of sale then?

A. If he did, I have got it; if he didn't, I hain't got it. I have got very near every paper I received.

Q. The paper you gave me this morning, did he give you that when you got the place?

A. Yes sir, that is what Jennings made.

Q. That is the paper you gave me this morning, isn't it?

A. Yes sir, I believe it is the paper.

Q. Can you read, Wallace?

A. No sir.

Q. Can you write, Wallace?

A. No sir.

Q. Never been to school any?

A. No sir, cannot tell any one letter, but when I see a paper and examine it, I can tell it when I see it.

Q. Now, Wallace, the land which this bill of sale covered—did it cover the McDaniel 80?

A. It covered 40 acres of the McDaniel place and two other 80's.

Q. Two 80's south of it?

A. Yes sir.

Q. The 80 you filed Sam Bob on?

A. Yes sir.

Q. And also the 80 you filed on yourself?

A. Yes sir.

Q. You have heard some testimony in regard to a sale you made Custis Harnage?

A. Yes sir.

Q. How many acres did you sell him?

A. 40 acres.

Q. What part of that land was that, Wallace?

A. It was the south 40.

Q. Who made that place?

A. Me; I made it all.

Q. Did you sell that place to him because you could not hold it yourself, because you had more land than you could hold?

A. Yes sir, I sold to him because we had more land than we could hold; we had fixed it up for allotment for me and Mary Anson and the boy's.

Q. Who is Mary Anson?

A. My wife.

Q. The 20 acres sold to Miller was more than you could hold?

A. Yes sir.

Q. How much money did you get for that?

A. \$60.00.

Q. What became of that \$60?

A. Built a house on the Sam Bob place with it?

Q. Is that house that you put on there last March?

A. Yes sir.

Q. That is on the 80 acres you filed Sam on?

A. Yes sir.

Q. The land in contest?

A. Yes sir.

Q. You used the money for that purpose?

A. Yes sir.

Q. Wallace, have you always considered the 80 across next to McDaniel's place, where the buildings was, as Sam Bob's property?

A. Yes sir, it must have been, as his principal money bought it.

Q. Did you so consider it yourself?

A. Yes sir, because his money bought it.

Q. You sold a place to McDaniel, didn't you?

A. Yes sir.

203 Q. Was that some excess you held?

Q. How much did you get?

A. \$800.

Q. What became of the money?

A. It is in the First National Bank at Bartlesville.

Q. Whose money was it?

A. Sam Bob's.

Q. The \$500 you got from Harnage, what became of that?

A. In the First National Bank.

Q. Whose money is that?

A. Mary Thursday's.

Q. Your wife?

A. Yes sir.

Q. Wallace, do you know Bill Field?

A. Yes sir. He has been on my place five years.

Q. Which place?

A. Upper place, adjoining this place we have been talking about, which has building on it.

Q. The 80 you filed on?

A. Yes sir.

Q. Farming the place Mary filed on?

A. Yes sir.

Q. How long has he been there?

A. Five years.

Q. White man, is he?

A. Yes sir.

Q. Is he here today?

A. Yes sir, I guess he is here.

Q. You saw him, did you?

A. Yes sir.

Q. Did you have him come here?

A. No sir, these other men brought him here I guess.

Q. Wallace, did you ever have any talk with Fields about the sale of any of your land last spring?

A. No sir, never had any talk with him.

Q. About the sale of your land?

A. Fields always come in and talked about what Buford said that Johnson was trying to keep me from selling that land, because he was going down to file on it.

Q. Fields told you that?

A. Yes sir.

Q. Fields ever tell you that you were going to lose your citizenship?

A. Said you could see it in the papers.

By Mr. Hastings: Attorneys for the contestant here desire to call attention of the Commission to the fact that they can not see the relevancy of this testimony, because Fields is not a party to the transaction, and it is entirely hearsay and irrelevant, and for that reason the testimony is objected to.

By the Commission: Objection noted.

Q. Did Fields ever tell you about any contest being filed against you?

A. I don't know that he did tell me.

Q. Contest against your land?

A. Yes sir, he——

By Mr. Hastings: Objected to by attorneys for contestant
204 because same is irrelevant and not admissible, and the same is leading.

By the Commission: Objection noted.

Q. Go on and state to the Commission what Fields told you about people contesting you on your land.

By Mr. Hastings: Objected to by attorneys for the contestants unless it is shown that Heady or Heady's wife was present during the conversation.

By the Commission: Objection noted.

A. He told me that Buford told him that they were going to be 15 contests against me, if I did get it.

Q. Get what?

A. Even if I got to file on that land.

Q. What land was that?

A. The 80 just below McDaniels.

Q. McDaniels or where you filed Sam?

A. Where I filed Sam.

Q. Which 80 at that time did you intend filing Sam on?

A. Right where I built that house.

Q. The 80 south of McDaniels.

A. Yes sir.

Q. You intended taking the other 80 between Sam's and the old woman's for yourself.

A. Yes sir, that was my intention at the time.

Q. Fields told you if you filed on the 80, 15 contests would be filed against you?

A. Yes sir.

By Mr. Hastings: Objected to because it is leading.

By the Commission: Objection noted.

A. That every contest would cost me — hundred dollars, and that the land would not be worth it.

Q. Tell you, you had better sell that place on that account?

By Mr. Hastings: Object to this line of examination because it is clearly in every way testimony inadmissible.

By the Commission: Objection noted.

A. He said if I didn't sell it before I filed that then I could not do anything with it. If I sold it before I filed.

Q. Did many people, Wallace, tell you you were going to lose your citizenship?

A. No sir, nobody only these men that were getting up these jobs.

Q. People who came to buy your land tell you that?

A. Yes sir, some told a straight tale and some fraud.

Q. Wallace, would you have sold that land, or any land you might have had there, to Mr. Heady, or to anyone else, if you had thought you were going to keep your rights?

A. No sir, I would not have sold to anybody. I said if
205 anybody gets that place, Chief Buffington, I rather him to have it quicker than anybody else.

Q. Did you tell Buffington you didn't want to sell the place unless you thought you were going to lose your rights?

A. Yes sir.

Q. Before Mr. Heady did the talking with you?

A. Yes sir.

Q. Did Fields come around and get to talking just about the time the sale occurred?

A. I cannot tell you; I was in bed for three or four days and never went out of doors.

Q. Fields come to see you during that time?

A. Yes, once in a while.

Q. When he came, did he talk about the land?

A. Yes sir, sometime he talked about the land.

Further hearing of this cause was adjourned to 9 o'clock a. m., October 10, 1904.

Tahlequah, I. T., October 10, 1904, 9 o'clock a. m. The Hearing was resumed at the above time and place, and the Direct Examination of Wallace Thursday was continued as follows:

By Mr. Veasey:

Q. Wallace, state to the Commission what Fields was in the habit of telling you about your land there?

A. Well, he said *he* I could hold it, I would have 15 contests on it and every contest would cost me a hundred dollars, and if I tried to fight, it would not do me any good anyhow.

Q. If you would hold your citizenship?

A. Yes, if I could hold my citizenship I would lose the land anyhow by the contest.

Q. Did he say who would be likely to contest you?

A. Didn't say who, but there would be 15 contests and every contest would be one hundred dollars, and if I tried to fight it, it would take the land anyhow.

Q. Did Fields tell you that the Cherokees were going to jump your land?

A. No sir.

Q. Did anyone else tell you that?

A. No, I don't believe the Cherokees would have jumped it.

Q. Wallace, state to the Commission what induced you to make that bill of sale.

A. Well, they said I would lose my rights, and I had better sell it to get something out of it before I could file, and if I did lose, I would have something for it.

Q. Do you remember the evening that Mr. Heady and Moran and Charlie Julian and Fields came to your house to have the bill of sale signed?

A. I don't remember the month.

Q. But you remember the circumstances?

A. Yes sir, I was on the bed.

Q. Sick at the time?

206 A. Yes sir.

Q. How long had you been sick?

A. Two weeks.

Q. Did you agree to sell the land before that time?

A. No sir, never agreed to sell to anybody. I said if I could not hold it, I would rather Buffington have it than any one else, because I thought he would give me something for it and appreciate it.

Q. Did you agree upon the price for the land that night for these people?

A. No sir, never agreed.

Q. Did they draw up the bill of sale in your presence?

A. They drew it up setting all about 10 or 12 yards from me. I was on the bed and it was about 10 yards.

Q. Who drew up the bill of sale or the writing?

A. Mr. Julian.

Q. Ask you anything about the things that he should put in the bill of sale?

A. Not I know of. They come in there and set down. Mr. Moran sat at my feet and the balance towards my head. They sat there a while and Mr. Julian spoke and said I reckon it is time to commence, and he pulled out his paper and commenced writing.

Q. Did you know what he was writing, at the time?

A. I supposed he was writing the bill of sale; I don't know what he was writing.

Q. Bill of sale for your land, wasn't it?

A. Yes sir.

Q. Did you know how much you were to get for it at the time?

A. Not until Moran spoke out.

Q. And he said \$2700 for your land?

A. Yes sir.

Q. Did they read the bill of sale to you?

A. No sir. I want to hear that bill of sale now; I never heard it yet.

Q. Did you know who the bill of sale was made to at the time—who you were selling your land to at the time?

A. No sir, I thought it was that little man; Moran and some young fellow come at the same time.

Q. Robinson?

A. Robinson; I heard Robinson talk; I thought he was the man buying the land.

Q. Did you know you were selling to Heady's wife?

A. No sir, I never heard of his wife at all until he come back there again.

Q. After the sale?

A. Yes sir.

Q. Didn't Heady come to you and scrape up an old acquaintance-ship through his wife?

A. Never saw Heady until that evening.

Q. The evening the bill of sale was drawn up, did Heady call—your mind that you had once known his wife?

A. That was after.

Q. After the bill of sale was drawn up and after you recovered from your sickness?

A. Yes sir.

Q. When he told you your citizenship was about as good as his?

A. He said so far as the citizenship was concerned, I had just as much citizenship as he had.

Q. What did you say to that?

A. I didn't say anything, but I thought that was a quick change and after he got my land, I had citizenship.

Q. They brought the bill of sale over to where you were lying on the bed?

207 A. Yes sir, Mr. Julian brought it over.

Q. You touched the pen?

A. Yes sir.

Q. You believed at that time you were selling your land?

A. Yes sir, I thought I was selling my land.

Q. Why did you sell your land at that time?

A. Thought if I could not hold it, I had better get something for my labor through life and have something to show for it.

Q. Why did you sign it without their reading it to you?

A. He brought it to my bed and said touch the pen, and I touched it.

Q. You are positive he didn't read it to you?

A. Yes sir, I am positive he didn't read it to me, and I have not heard it yet.

Q. Did you see Mr. Heady sign as a witness?

A. Nobody else signed in my house.

Q. Didn't see Moran sign it?

A. Not in my house. I reckon Mr. Julian signed it, because he made it.

Q. Did they give you a check at that time for any money?

A. Give me three hundred dollars.

Q. Who?

A. Mr. Moran.

Q. Write it out and give it to you?

A. Yes sir.

Q. What did you do with it?

A. I held it in my hand on the bed. When they got out of the door, the boy spoke and said give it to me and I will put it in the trunk. He got my keys and I started to give it to him and Mr. Julian stepped up and said I will take it to town and just walked out with it.

Q. Say anything else?

A. Told the boy to come up the next morning and he would give him record of it.

Q. You told Julian to take the money?

A. No sir.

Q. He took it from your hand without your consent?

A. Yes sir.

Q. Wallace, if Sam Bob should lose this land, would he have any more to file on, have 80 acres to file on there?

A. Why he could file on the 80 I filed on if I could not have any land.

Q. The 80 you filed on is in contest, isn't it? Isn't Biddy Martin contesting you?

A. I don't know.

Q. The only 80 he would have to file on would be the 80 you filed on?

A. Yes sir.

Q. You have no more land or he has no more land there?

A. Only the two 10 acre tracts.

Q. You haven't quite completed the allotment of Mary Thursday, have you?

A. No sir, I lack eight acres.

Cross-examination.

By Mr. Hastings:

Q. Wallace, you are a colored man, aren't you?

A. I am part colored.

208 Q. And you claim your rights to citizenship by virtue of inter-marriage to Mary Anson, now Mary Thursday?

A. That is the only way I claim it.

Q. And your rights to be enrolled are being contested on the ground that a colored man can not be admitted as a citizen by inter-marriage, is that it?

A. I don't know. If you examine the books, I think it says any fellow marrying will have the right.

Q. Isn't that the reason your citizenship is contested is because you are a colored man?

A. I suppose that is it myself. I don't see nothing about the balance of that.

Q. And your citizenship is not determined yet?

A. No sir.

Q. Your citizenship, of course, then, was not determined last April when you made a sale of this land?

A. Yes sir.

Q. It was determined, was it?

A. I suppose it was, because I——

Q. You were admitted at that time?

A. At the time the Commission was over at Bartlesville.

Q. You are not admitted yet, are you?

A. I don't know.

Q. Then, you don't know your status as a citizen of the Cherokee Nation?

A. Only by law.

Q. Don't know whether the Commission passed on your case or not?

A. I don't know.

Q. Don't you know it has not?

A. I don't know.

Q. You have no notice from the Commission that they have passed on the case?

A. No sir.

Q. Know a man—a preacher—named Evans?

A. Yes sir, I know him.

Q. Know whether he is connected with the oil company?

A. I don't know. I cannot tell you that he is, because he never told me he was.

Q. Wasn't he out to see you a great many times prior to the time you sold this land to Mr. Heady, before that?

A. Yes he was there several times.

Q. Was he there a number of times?

A. Yes sir.

Q. Was he trying to lease your land?

A. Mr. Evans was not trying to lease it. Other man——

Q. What was he there for?

A. Helping this oil company, I reckon.

Q. Helping what oil company?

A. Delekee Oil Co.

Q. Who was representing this company?

A. I don't know.

Q. Do you know Mr. Gray?

A. Yes sir.

Q. Is he interested in an oil company?

A. Yes sir, I guess.

Q. Know Mr. Combs?

A. Yes sir.

Q. Is he interested in an oil company?

A. Yes sir, I guess he is.

Q. Did Mr. Evans come out to your house frequently attempting to get a lease for this company that these people are interested in?

A. He come along a good many times with them.

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Q. How many times?

A. I cannot tell you.

Q. Hundred?

A. Somebody every day or two for three months.

Q. I am talking about him.

A. He didn't come a hundred times.

Q. A great many times?

A. Yes sir.

Q. Did he come a great many times after this sale was made, too?

A. Yes once in a while.

Q. But he did come a number of times.

A. Yes sir.

Q. What did he talk about when he come out there?

A. Well, sir, I can't tell you; he talked about different things.

Q. Ever talk to you about leasing this land?

A. They had leased the land.

Q. Did Evans talk to you about it?

A. Why, yes, he said that they had leased that land.

Q. Said that they had leased it—what land?

A. This land that is contesting on now.

Q. Said they had already leased that? It hadn't been filed on at that time, had it?

A. No it hadn't been filed on only we had surveyed out, and he seen it on the paper.

Q. Did you execute a lease before you filed on it?

A. Yes sir, I believe I did.

Q. Executed a lease on this particular 80 acres in controversy?

A. It was on the whole place.

Q. Then it was on the 80 too, Evans got?

A. I didn't say particularly what land or where.

Q. How much did they give you?

By Mr. Veasey: Objected to as irrelevant and immaterial.

By the Commission: Objection noted.

Q. On the 320 acres, how much did they give you?

A. Haven't give it to him yet, but were to give it when the land was improved.

Q. Give you anything?

A. Something, of course.

Q. How much?

A. Couple of hundred dollars, maybe more.

Q. Paying your expenses around?

A. Not to all points, but paid it down here.

Q. Paid your expenses down here, did they?

A. Yes sir.

Q. If this is your land or land for Sam Bob, why did these outside parties pay your expenses down here? Why didn't you pay them yourself?

A. Well, I believe they are interested in this thing.

Q. How are they interested in it?

A. If a man is in a bargain for anything.

Q. You bargained it to them, have you?

A. I don't know whether it is a bargain or what it is, but I guess

when a man gives his word, he will do a thing; I don't know whether it is a bargain or not.

210 Q. How much are they to give you?

A. \$100.00.

Q. For a lease on all of this 320 acres?

A. No, it is not 320.

Q. How much are they to give you for a lease on it?

A. About 140 acres; maybe not.

Q. Where are the 140 acres?

A. Another man bought 70 acres.

Q. Who?

A. Woodward.

Q. How soon after you sold this land to Heady before Evans came to see you?

A. I cannot tell you about that because I was in bed.

Q. What did Evans say when he came out, about your selling this land? Ask you if you sold it?

A. Yes, sir.

Q. And you told him you sold it?

A. Yes, sir.

Q. And told him you had given bill of sale for it?

A. Of course if a man sells a thing he has given something.

Q. You did, did you?

A. Yes, sir.

Q. And you told him Mr. Heady run a fence along the south boundary and cut it off?

A. I don't know, because I was in bed.

Q. How long did you remain in bed?

A. About a week and a half after the trade.

Q. Before the week was up, Evans was there to see you?

A. Yes, sir.

Q. How many times did he come to see you?

A. Once or twice, I think.

Q. As soon as you got up, you saw the fence Heady put around through there?

A. Yes, sir.

Q. Was it on your way to Bartlesville?

A. Yes, sir.

Q. You knew Heady put it through there?

A. I knew it must have been him.

Q. And you heard of it before you got up?

A. Yes, because the boy told me.

Q. Sam Bob told you?

A. Yes, sir.

Q. When you say "the boy" you mean Sam Bob?

A. Yes, sir.

Q. Told you Heady had run a fence around it and cut it off?

A. Yes, sir.

Q. After this you went down to town and had this talk with Mr. Wm. Johnson, who testified?

A. Yes, sir, I went to the bank to see whether the money was in there.

Q. How much money did you expect to find in there?

A. I expected to find all of it.

Q. How much?

A. I don't know.

Q. How much would have been all?

A. \$2,700.00 they said.

Q. They told you that night when drawing the bill of sale how much you were to get?

A. That is what Mr. Julian said; he said \$2,700.

Q. When he was writing the bill of sale?

A. Yes, sir.

Q. He inquired how much money and they said \$2,700.

A. Yes, sir.

Q. In your presence?

A. Yes, sir.

Q. While he was writing the bill of sale?

A. Yes, sir.

211 Q. You knew, then, all of the money wasn't to be paid at that time, because you went afterwards to see if it was paid?

A. I don't know; they talked as if they had the money on hand.

Q. Why did you go to the bank?

A. Because Mr. Julian had the money and said he would give the boy a record in the morning; he went and didn't get it, and I went to see about it.

Q. Did you find three hundred dollars deposited?

A. I didn't ask for three hundred dollars. They said they sent the money off.

Q. Sent the check for collection?

A. Yes, sir.

Q. Did you go back to see Mr. Johnson again?

A. I don't know, but I guess I did.

Q. You heard him testify to that fact?

A. Yes, sir, I believe I did.

Q. Didn't he ask you if you had sold this 80 acres in controversy?

A. He heard it before that, because he knew the money was put in his bank. I met Mr. Johnson and asked for the money, and he said it was there, and I started out the door and met Mr. Johnson and he said come back I want to talk to you a while.

Q. What did he say?

A. He said "Let me keep that money;" said first, "What are you going to do with it?" I told him I was going to put it in the First National Bank, and he said, "Why can't I keep it?" I told him what I had in the First National Bank and that I wanted to keep it all together. He said that money is not here, that "we sent it to St. Louis;" we are doing business and we want to find out whether that money is all right or not; we can't take a man's check without knowing it is all right; said "you better look after that bill of sale." We talked a while and I went to Mr. Julian's office, and talked with him a while and I called for that bill of sale. All the answer he would give me he said "You will get that money as sure as you are

setting there." I told him I wanted the bill of sale; he said "You will get your money." I went out.

Q. Did you tell Mr. Johnson you had sold this land for \$2,700?

A. Yes, sir, I told him that.

Q. You told him you signed a bill of sale, didn't you?

A. Yes, sir, I signed it.

Q. Did you afterwards go there and deposit the money and take a time certificate for the deposit from the Bartlesville National Bank, of which Mr. Johnson is President?

A. No, sir, I didn't. Johnson told me "When that money comes back, I will put that money on interest for four per cent.

Q. Didn't you tell him to do so; it was all right?

A. I told him it was all right.

Q. Didn't he give you a certificate to the effect?

A. Not until the money come back.

Q. When it came back?

A. Yes, sir.

Q. And you accepted it?

A. Yes, sir.

Q. And have got it yet?

A. No, sir.

Q. What did you do with it?

A. I took it home and I thought I had better take it and put it back in the bank.

Q. You take it back?

A. Yes, sir, and put it in the bank.

Q. And left it there for safe keeping?

A. Yes, sir.

Q. And it is there, as your paper, for safekeeping?

212 A. Yes, sir.

Q. And the money is there yet?

A. No, sir, the money is here.

Q. Have you drawn it out?

A. I drew it out when I come down.

Q. So you came to the Bartlesville National Bank and drew it out?

A. Yes, sir.

Q. And you brought it down here with you? did you?

A. It come with me.

Q. Who brought it?

A. Mr. Combs brought it down; I give it to him to bring down.

Q. Did you go to the bank to get it yourself?

A. Me and Combs did.

Q. Is Mr. Combs connected with the Delekee Oil Co.?

A. He is one of them.

Q. Did Mr. Combs come down with you when you filed?

A. No, sir.

Q. Did Mr. Evans?

A. Yes, sir.

Q. Did Mr. Gray?

A. Yes, sir.

- Q. Gray a white man?
A. Yes, sir.
Q. They came down here to Tablequah with you?
A. Yes, sir.
Q. They both are interested in this Delekee Oil Co.?
A. Yes, sir.
Q. Well, did they start from Bartlesville down here with you?
A. Yes, sir.
Q. Come on the train all the way with you?
A. Yes, sir.
Q. They were here when you filed?
A. Yes, sir.
Q. Where did you stop at when you came to Tablequah?
A. Stopped right down there at the hotel.
Q. National Hotel?
A. Yes, sir.
Q. Where did they stop?
A. Stopped at the same hotel.
Q. How long did you stay here?
A. I stayed here two or three days.
Q. And they stayed here all that time too?
A. Yes, sir.
Q. They were in constant attendance upon you, were they?
A. Yes, sir.
Q. They were with you all the time?
A. Yes, sir.
Q. And they told you how to file on this land?
A. I had it on the ticket, and I could see without their telling me all the time; they helped me to survey it out.
Q. Helped survey it, did they?
A. I paid for surveying.
Q. Did they get it surveyed out before you came down?
A. I surveyed it four times to get it correct.
Q. Didn't you tell William Johnson at the time this money was deposited in his bank on a six months' time deposit at 4% interest, that you had sold this 80 acres of land in controversy to Mr. Heady, for his wife, and that you had signed up a bill of sale, and that it had been acknowledged before a Notary, and that you had sold for \$2,700.00?
A. I didn't know who it went to.
Q. Didn't you mention Heady's name?
213 A. When the place was sold, I didn't know who it was going to. I thought Moran was the man who bought the place.
Q. You knew Moran wasn't a citizen, didn't you?
A. Didn't know what he was.
Q. Didn't you know his name was Heady?
A. No, sir, never did until that time.
Q. He told you then what his name was?
A. I heard them speak about Heady.
Q. When the bill of sale was being drawn?

A. Yes, sir, I didn't know he was the man getting the land.

Q. And you told him you knew his wife when a boy?

A. I think I did.

Q. And he told you his wife was a Delaware?

A. Yes, sir.

Q. And you said you had rather sell to a Delaware than anybody else?

A. No, sir, never told him nothing.

Q. Didn't he tell you he wanted to buy it for a home and come to live there with his family to get near a school?

A. Yes, sir, that was the time he explained his wife was a Delaware.

Q. That was about noon, and the bill of sale was signed that night?

A. No, sir, I never seen Heady until the night the bill of sale was made.

Q. Didn't Heady and Moran come out there the day before?

A. No, sir.

Q. Didn't they come out there the same day, sometime in the afternoon?

A. If they did it was after the bill of sale was made. Never seen Heady before in my life.

Q. Didn't Heady and Moran come before the bill of sale was made on the evening of the same day?

A. Well, I can't tell you. If they did, I can not tell you; I was on the bed.

Q. Will you swear that Heady never came in the house the evening of the same day before the bill of sale was made?

A. If so, I didn't see him. Never seen Heady before that night of the bill of sale; I will swear to that.

Q. Did Moran tell you how much he would give, the evening before?

A. No, sir. Mr. Heady and another man, called White, came in.

Q. Col. White?

A. I think that was his name.

Q. Came in the same day did they?

A. The same day I think the bill of sale was made. Mr. Moran sat up and I seen him; the little man sat right at my head. Mr. Moran said I heard you had 80 acres to sell.

Q. Did you tell him you had?

A. I told him no.

Q. Didn't you try to sell before?

A. No.

Q. Hadn't because Chief Buffington had been there to buy it?

A. He come and said if I couldn't hold it, he would buy it.

Q. Didn't you send Fields to town to wire Buffington?

A. Yes, sir; I said I rather him have it.

Q. Why did you send Fields to town to wire Buffington?

A. Because he was the man I wanted.

Q. Then, you did want to sell it.

A. If I could not hold it, of course I wanted to sell.

Q. When did you determine you wanted to sell it?

A. Well, after they kept coming up and saying I could not hold any land.

214 Q. Then you had come to the conclusion that you wanted to sell it before Moran and Heady came out there and Julian, that night?

A. No.

Q. When did you send Fields to town to wire ex-Chief Buffington to come?

A. I wanted to talk to him; he is a man of experience, and he might tell me whether I could hold it or not.

Q. When did you do that; how long before that?

A. Two or three days.

Q. And you told Fields you were going to keep the boy's, Sam Bob's and your wife's land together?

A. Yes, sir.

Q. And you intended to take the south 80 acres for the boy, because it would be joining his grandmother's?

A. Yes, sir.

Q. For that reason, if you sold any, you were going to sell the north 80?

A. Yes, sir, that was right.

Q. You told Tom Edwards, after this sale was made, that you had sold this land to Heady for \$2,300, didn't you? He was a tenant on your place?

A. Yes, sir, I believe I did.

Q. You did sell to him for \$2,700?

A. Yes, sir, I did.

Q. You didn't want to keep it if your citizenship wasn't good, and if you lost out, you didn't want anybody to have land in between the boy's, Sam Bob's, and his grandmother's?

A. I didn't.

Q. And it was more valuable to have it all in a block and joining?

A. Yes, sir, that was my idea.

Q. And it was your idea, if you sold any, to sell this north 80?

A. Yes, sir.

Q. And this 80 in controversy?

A. Yes, sir.

Q. And you told Tom Edwards you sold to Heady for \$2,700?

A. I told him that twice.

Q. After you got up, you sold Mr. Heady the grass off of it?

A. Yes, sir.

Q. He paid you thirty dollars for it?

A. Yes, sir.

Q. He had possession of it then, did he?

A. No, sir, not until my crop was off.

Q. Well, there was only about 15 of 20 acres in cultivation on that 80 wasn't there?

A. 15, I guess.

Q. And that you were to have your crop off the 15 acres?

A. Yes, sir.

Q. The rest of it, he took possession of?

A. Yes, sir.

Q. Wasn't it agreed that night, when writing up the bill of sale, that you were to have the crop off of it that year and the grass at the same time?

A. Yes, sir.

Q. When did Mr. Heady come back and buy the grass off of it?

A. The day he told me my citizenship was as good as his.

Q. How long after this?

A. Two or three days after it.

Q. You knew then he bought the place?

A. Yes, sir.

Q. Knew then he was in possession?

A. Not until I got the grass off of it.

Q. When you sold him the crop, he took possession?

215 A. Yes sir.

Q. And he had possession of all but 15 or 20 acres in the cultivation down in the corner?

A. Yes sir.

Q. The boy told you Mr. Heady had run a fence along the south side and cut it off?

A. Yes sir. I knew, the boy told me; didn't say Mr. Heady or who it was, but it was there.

Q. You sold 80 still north of this to Fred McDaniel?

A. Yes sir.

Q. And sold that for ten dollars an acre?

A. Yes sir.

Q. Now, you had 160 acres for your wife that was still south of the 80 you afterwards filed on, didn't you, except where the road ran through it?

A. Yes sir.

Q. She is a registered Delaware?

A. Yes sir, registered Delaware.

Q. Now, the Delaware decision was handed down on the 23rd day of February of this year, wasn't it?

By Mr. Veasey: Objected to for the reason that there is better evidence to that effect.

By the Commission: Noted.

A. Well, I don't know whether it was or not.

Q. You knew last spring that there had been a decision of the Supreme Court that would give your wife 160 acres of land and the boy Sam Bob, 80?

A. Yes sir.

Q. Knew this when these gentlemen were out to see you the 1st day of this year—knew Bob could not hold but 80 acres?

A. Yes sir.

Q. You had been told by a number of parties that your citizenship was in doubt?

A. Yes.

Q. And you had 320 acres of land, less what the railroad cut

out on running through it, and the south 160 you wanted for your wife, didn't you?

A. Yes sir.

Q. And you were holding the north 160 for you and the boy, wasn't you, Sam Bob?

A. Yes sir.

Q. And you came to the conclusion if you were going to lose your citizenship, you preferred the boy to take the 80 next to his grandmother?

A. Yes sir, I did.

Q. And for that reason you finally came to the conclusion to sell the north 80, didn't you?

A. Yes sir.

Q. Now Wallace how much had you ever been offered for this north 80 of land before Mr. Moran came out there?

A. I have always stood it off, and would not sell to anybody.

Q. How much did Evans offer you for it, before Moran came out there?

A. I don't believe any of them made any offer for it, because I stood them off, because it was the boy's place.

Q. You knew you were selling this land, that 80, that night?

A. Yes sir, I told you why the reason was. They never commenced doing me until we just took our allotment; some neighbor close by begun to gouge on me, and they commenced to say
216 that I could not hold my rights. That is the reason I sold.

Q. This north 80?

A. Yes sir; rather sell the north 80 than have anybody between the boy and the woman.

Q. The reason you sold the north 80?

A. Yes sir.

Q. You kept the south 80 of the north 160 for the boy?

A. Yes sir, I believe that is it.

Q. You sold the north 80?

A. Yes sir.

Q. Didn't ex-Chief Buffington offer you \$2,250?

A. I didn't say what he said. He offered me a price and started off.

Q. How much did he offer you?

A. Well, he went out my gate, and he said something about how much I will give you, and I stepped and was going to answer the question and they went on.

Q. Didn't he offer you \$1,750?

A. At the first time, I believe he did offer me that. He said, "I don't want your land if you can hold it; if you can't hold it, I want it."

Q. He offered you that for this north 80?

A. He didn't say where and I never said where.

Q. Never heard him offer you more than \$1,750, did you?

A. I don't know. He said here that he offered more.

Q. Of course you would not sell any other land but this north 80 acres, that would separate the boy from his grandmother?

A. No. I didn't want anybody between them, because it would

make it difficult to have anybody between his and his grandmother's and I was doing the best I could for the two, if I couldn't hold it.

Q. Did Ex-Chief Buffington ever offer you more than \$1,750 for this, as you heard?

A. Yes, he told me here he would pay more.

Q. After you got here?

A. Yes sir.

Q. That was after you sold to Heady's wife, wasn't it?

A. I didn't know I sold to Heady's wife. Mr. Moran paid the money, and I never seen Mr. Heady.

Q. He was there when the bill of sale was executed.

A. Yes, but I didn't know who was buying.

Q. Was Sam, the boy, in the room?

A. Sometime and sometime out.

Q. In and out of the room?

A. Yes sir.

Q. And he told you when you started off down here to be sure to file him on the south 80, didn't Sam Bob, next to his grandmother, and you promised you would, didn't you?

A. I don't know nothing about that.

Q. Didn't he ask you to file him on the south 80 next to his grandmother's?

A. He told me when I sold that he would like to be filed next to his grandmother's, rather than have anybody between us.

Q. He told you when you started down here to file him on the 80 next to his grandmother?

A. No sir.

Q. Didn't you promise him you would?

A. I told him I would rather file him on that, because I didn't want anybody in between him and his grandmother.

Q. When you came down here, this man Evans and Gray, representing the Delokee Oil Co., had you file Sam Bob on—

A. This man Julian come to me and I told him if he had not come in and made remarks, I would not bother him; I told him right at the table, and I told him if it was proved in this
217 house, I would file on it—if my rights were proved.

Q. Then you, up to the time you went to file, you didn't intend to file the boy on the north 80, until Mr. Julian came up?

A. No, I would not.

Q. If Mr. Julian hadn't come up, you intended to file the boy on the south 80?

A. I was going to file the way he wanted to file, and he objected and wanted me to file the way he wanted, and I told him if it was proved in this house, I would file on it.

Q. The way it ought to have been filed was Sam Bob ought to have been filed on the south 80—is that right? That is what you have sworn?

A. Yes sir, that would have been right.

Q. And that was what you intended to do all the time until you went to file and Mr. Julian stopped off?

A. Yes sir.

Q. That was what you intended to do when you left Bartlesville, to file Sam Bob on the south 80?

A. Yes sir, if I could not hold; that was my intention.

Q. When you left Bartlesville, had you offered Mr. Heady or Mr. Moran, either, back this \$2,700 to come here to file?

A. No, Mr. Heady was down to my house several times with different men, talking about this question, and I told him that if they hadn't put it in court, we could do something. Told him it was in court, and I wasn't going to bother.

Q. You were the first fellow to file on this land, were you?

A. Yes sir.

Q. Before Heady got into the Land Office to file, didn't you?

A. Heady was here when I come; I don't know who filed first.

Q. At the time you made application to file upon this land for Sam Bob, you had Heady's \$2,700.00 in the Bartlesville National Bank, drawing 4% interest?

A. Yes sir.

Q. And you were going to have the land and the money, too?

A. No, I wanted him to have his money; I rather have the land than the money.

Q. You came to that conclusion after you sold?

A. After they said I was as much citizen as he was. I said if I could hold the land, I would give the money back.

Q. After you made this sale, somebody told you you could get your citizenship, and you changed your mind?

A. He was the first man, Heady, who spoke.

Q. He doesn't claim to be a lawyer?

A. He was there a few days.

Q. Mr. Fields was your tenant, and he wasn't a lawyer, was he?

A. He was a tenant of mine, but I was sick, and he said he would help me all he could.

Q. He stayed there and waited on you?

A. Fields—No sir, he didn't.

Q. I will ask you, as a matter of fact, if he wasn't the means of you getting \$230.00 more for a tract of land you sold to C. L. Harnage, you had previously sold for \$300?

A. I didn't sell to nobody until that day I was putting out a fence and they wanted to look at some timber; when I got there, there was Fields and Heady and Harnage, walking over the land. I didn't know a word about it until I come down there. We walked thro the bottom to look at the timber, and they made a proposal about this land. I hadn't made a offer to no man to sell nothing. They showed me it was from my allotment.

Q. Who showed you?

A. Mr. Evans.

Q. Mr. Evans out there when you sold the 40 acres to Harnage?

A. Him and Fields.

Q. Hadn't you agreed to sell this 40 acres to Charles Webber?

218 A. No sir.

Q. Charley Webber offered you \$300.00 and hadn't you agreed to take it?

- A. No sir, I hadn't.
Q. You deny that?
A. Yes sir.
Q. Evans was out there and members of this Delekee Oil Co. when you sold the 40 acres to Harnage?
A. Yes sir.
Q. Who paid you the money?
A. Why, Mr. Harnage was to pay his half of it right down.
Q. Who was to pay the other half?
A. That come—I don't know.
Q. Harnage paid half down?
A. He left it there.
Q. With whom?
A. There in the office.
Q. Well, who paid it?
A. Gray paid the money to me.
Q. Gray as a member of this Delekee Oil Co.
A. Yes sir.
Q. Had it all been paid to you, \$530.00?
A. Yes sir.
Q. Who paid you the other half?
A. That was all, wasn't it?
Q. Harnage left half for Gray to pay?
A. They put it in Gray's hands.
Q. Gray paid it all?
A. Yes sir, he paid it all.
Q. The Delekee Oil Co. paid it all?
A. I don't know.
Q. They paid it, tho?
A. I don't know how that was.
Q. You sold 40 acres for \$530.00?
A. Yes sir.
Q. Did it have a house on it?
A. Yes sir, a good house.
Q. On the 40 acres?
A. Yes sir.
Q. How much in cultivation?
A. About 10 or 12 acres.
Q. Nearly as much on that 40 as on this 80, wasn't there?
A. Pretty near it.
Q. Sold that for \$13.25 an acre, didn't you? The 40 acres to Harnage.

By Mr. Veasey: Objected to for the reason that it is a matter of calculation.

The Commission: Noted.

- A. I don't know how much it is an acre, myself.
Q. And you sold this to Heady's wife for \$35.00 an acre?
A. I don't know how much. That was the proposal they made.
Q. Proposal who made?
A. Moran.

Q. When did Moran make the proposal?

A. The first day he was out there, and that little fellow.

Q. They offered \$2,700?

A. Yes sir. The same evening they came back and closed the bargain.

Q. You sent Fields to town to talk to him about the matter?

219 A. No sir.

Q. Didn't you know they were coming back that evening to close the bargain?

A. No sir, nothing about it.

Q. You knew how much they were to give?

A. No sir.

Q. You swear you heard Julian and these parties talk over the amount of consideration, \$2,700.00, while the bill of sale was being written?

A. Yes sir, at the bed side when he asked how much money.

Q. You heard that?

A. Yes sir.

Q. Then, you did know how much you got for the 80 acres?

A. Yes sir.

Q. Understood you got \$2,700.00?

A. Yes sir.

Q. You sold 20 acres of land to Stephen Miller, didn't you?

A. Yes sir.

Q. Sold that for \$3.00 an acre, didn't you, 80 acres?

A. Yes sir, that is north, rocky.

Q. You sold some to Lannom?

A. I had to sell that to come to the lines.

Q. Did you sell to him?

A. It wasn't no sale; it was just a contract he was to make a fence run through and I was to join, and he gave me \$70.00, I believe, for my improved land.

Q. How much was it?

A. 30 acres.

Q. And he just made a fence for that 30 acres?

A. He made a fence and the \$60.00.

Q. Who paid your way down here when you and Evans and Gray come down when the land was filed upon in May 1904?

A. Why, I think I told you once that they paid my way.

Q. Paid your hotel bills?

A. Yes.

Q. Paid your railroad fare?

A. Yes sir.

Q. Paid all your little expenses down here?

A. No, not all of my little expenses; paid my board bill.

Q. Advised you to file Sam Bob on this 80 north?

A. No, never advised me or nothing?

Q. Never advised you to file?

A. No sir.

Q. Weren't they present when you filed?

A. No sir, they could not be present.

Q. Wasn't in the land office at the time you filed?

A. No sir, were not.

Q. They knew how you were going to file when you got in, didn't they?

A. Maybe they knew that, but they were not in the house.

Q. They didn't know, then, how you were going to file these parties, did they?

A. No, they didn't know how I was going to file.

Q. Don't you know they did, because you have already sworn you gave them a lease upon this land, and didn't you give this Delekee Oil Co. a lease on this land and designate the south 80 and the 80 south of the land in controversy for Sam Bob in that lease?

By Mr. Veasey: Object to the question for the reason if the lease was acquired, the execution lease itself would be evidence of its contents.

220 By the Commission: Noted.

Q. Didn't you execute that lease for Sam Bob on the 80 south of this in controversy, the south 80?

A. I don't know whether I done that or not.

Q. That was the 80 you intended to file Sam Bob on, you have just sworn?

A. Yes sir, but I didn't change the lease or nothing.

Q. Hadn't you already executed that lease when you came to file on this land?

A. I give them a lease and it was on all of it.

Q. When did you give them a lease—before or after you sold to Heady?

A. Long before that.

Q. Didn't you give them a lease, now, on the south 80, for Sam Bob?

A. Well, I would not have changed it because they did not say just where.

Q. Well, did you?

A. No, I didn't.

Q. Didn't give them a lease on the 80 south of the land in controversy for Sam Bob?

A. They had a lease on it all, and I could not change it, because they had a lease over the whole thing.

Q. Isn't it a fact that you gave them a lease south of the 80 in controversy, for Sam Bob?

A. I given them a lease on that before. Sam Bob didn't want to lease it until he was a man, grown.

Q. Never give them a lease on Sam Bob's at all?

A. I have not.

Q. Haven't yet?

A. Since we filed on it, I guess they have a lease on it.

Q. How long after you made application to file on it before you leased it?

A. Well, it was along about the time they were surveying it to find how many acres would make out allotment.

Q. Before or after you filed on it?

A. Before.

Q. Then you leased to them before you filed on it and after you sold to Heady?

A. Yes sir.

Q. You told Evans about signing this bill of sale, didn't you, and Gray and Combs, members of the Delekee Oil Co., about signing this bill of sale?

A. They known it the same night it was known.

Q. How do you know they knew it?

A. I heard it in town there.

Q. How do you know they knew it—they tell you they knew it?

A. Yes.

Q. What did they say about it?

A. Buford met some of them in the store the next morning and told them that the men had met and come to a deal, and they laughed at that.

Q. How do you know that; were you present?

A. No sir, wasn't present.

Q. Evans tell you about it?

A. Yes, or somebody else.

Q. Some members of the Delekee Oil Co., told you?

A. Yes sir.

Q. What did they say for you to do?

A. Didn't say what.

Q. Who advised you first to go back on this trade?

221 A. I thought if I did hold my rights, I had that fenced and enclosed, and if they frauded me to get it I wanted it back.

Q. That is the reason why instead of filing Sam Bob on the south 80, you filed him on the north 80, the land in controversy?

A. Yes sir.

Q. Before that you intended to file Sam on the south 80?

A. Didn't I tell you once before?

Q. You have just testified that you intended to file Sam on the south 80 until you came down here, and until Mr. Julian came up and said something to you when you were going to file.

A. Yes sir.

Q. If that be true, why is it that before that time you let the Delekee Oil Co. have a lease on the same land, if you didn't intend to file upon it?

A. They were holding a lease on it.

Q. Why did you give a lease on it after you sold Heady, if you did not intend to file on it, as you have just sworn?

A. I told you once they had a lease on it before I sold to Heady and I didn't speak nothing about it; I didn't speak anything about that, that they had a lease on it, and we didn't make no change on it at all.

Q. Now, you have raised Sam Bob?

A. Yes sir, raised him from a boy.

Q. And he has always been a part of your family?

A. Yes sir.

Q. You had letters of guardianship, under the Cherokee law?

A. Yes sir.

Q. You just drew his money and his money and your wife's money went into one check?

A. Yes sir.

Q. And you used money out of that to support the family, buy clothes for him and for your wife and other things for the family?

A. Yes sir, and made the place as just I could.

Q. And you took money out of the first payment and the second payment too, to support the family, didn't you?

A. Yes sir, of course that is what we had it for.

Q. Bought him clothes and supported him just like you did your wife and yourself?

A. Give him better clothes.

Q. Supported him better than yourself and wife?

A. Yes sir.

Q. Cost more to keep him than yourself and wife?

A. Yes sir.

Q. Now, this place wasn't bought from William Johnson until after the second Delaware payment, was it?

A. It was started before the second. We had talked the thing over before the payment.

Q. But it was not bought and paid for and delivered until after the second Delaware payment?

A. Yes sir.

Q. When were you appointed guardian of Sam Bob in the United States Court?

A. Well I don't know just exactly when it was.

Q. You had already been appointed guardian long before you sold this land to Heady, hadn't you?

A. Yes sir.

Q. I will ask you if you hadn't sworn in your petition for leave of Court to lease the allotment of Sam Bob, and that you had been appointed guardian of the person and effects of his said minor child referring to Sam Bob, on the 25th day of November, 1903—or very nearly a year ago now?

A. Of Sam Bob by the United States Court?

222 Q. Yes sir, at Nowata.

A. I think it was this spring.

Q. Had you been appointed guardian when you came down here to file upon this land?

A. We had the guardian papers started, we hadn't finished them.

Q. Where did you take out Letters of Guardianship?

A. I don't know whether at Vinita or Nowata. Nowata is the place we go to start them; I don't know where we took them out, they sent them to me.

Q. How long after you made application to file upon this land was it before you attempted to make a lease to the Delekee Oil Co. upon it?

By Mr. Veasey: Objected to for the reason that it is wholly irrelevant and immaterial.

By the Commission: Objection noted.

A. Didn't I tell you before that they had leased it, but they didn't say just how much or where it was leased. I give them a lease on the land for oil.

Q. I will ask you if, thinking or anticipating that you were going to file on the 80 south of the land in controversy, for Sam Bob, if you didn't petition the U. S. Court, at Nowata, for leave to lease the 80 acres south of the land in controversy for Sam Bob, thinking that you were going to file Sam Bob upon this 80 south of it, to the Delekee Oil Co.?

A. No sir, I don't recall at all petitioning for permission at all about it.

Q. You don't remember sending in such a petition?

A. I may have sent it, but I don't recall any such thing.

Q. Did you sign one order in July, the same date you made application to file, which had been made out before that? They already had the papers prepared, didn't they, when you went to sign it?

A. I expect they did; I don't know.

Q. Didn't you sign one order the same date you made application to file upon this land?

A. I made one after I filed upon the land.

Q. That same date?

A. Yes sir.

Q. They had the papers all made out when you went down there?

A. I don't know.

Q. They didn't have them to make out when you went, just told you to touch the pen, didn't they?

A. It takes a good deal of studying over it for me to know that one.

Q. Did you say Mr. Combs wasn't present when you signed this petition to lease the land?

A. I have been there three times.

Q. Was he present on the same day you filed, or after you filed or on the same day you filed, namely, the 5th day of May, 1904, when you signed petition for leave of Court to lease the allotment of Sam Bob for oil and gas purposes to the Delekee Oil & Gas Co.? Was Combs present?

A. I don't know; I don't believe he was.

Q. Was Andrew Clark present?

A. I don't know.

Q. Mr. Combs and Mr. Clark, members of this Delekee Oil Co., or interested in it?

A. I don't know.

Q. Was J. S. Combs present?

223 A. I don't recall at all,

Q. How many of these fellows did the Delekee Oil Co. send to accompany you to Tahlequah—sent Evans, didn't they?

A. Yes sir.

Q. Sent Mr. J. S. Combs?

A. He wasn't here.

Q. Which was—Combs wasn't here?

A. I don't think he was.

Q. Mr. Gray here?

A. Yes sir.

Q. What other members of the Co. was here?

A. Harned.

Q. Did you sign any papers here asking permission for leave to lease this land of Sam Bob's, while you were here in Tahlequah, after you filed?

A. I may have done so.

Q. Didn't you sign for permission to lease the south 80—the 80 south of this?

By Mr. Veasey: Objected to for the reason that Mr. Hastings is putting in his own evidence about it.

Noted.

A. No, I didn't make any memory about what 80, if I asked at all it was Sam Bob's place that I asked to give him the privilege to lease it.

Q. At that time you didn't intend filing Sam upon this north 80, did you?

A. You asked me that three or four times.

By Mr. Veasey: I object to this frequent repetition.

By the Commission: Objection noted.

Q. I am asking you again now.

A. No.

Q. And it was for that reason that you asked permission of Court for leave to lease the 80 south of the land in controversy for Sam Bob, wasn't it, because you intended to file him upon that 80?

A. Yes, I intended to file Sam Bob on that 80 if I couldn't hold it.

Q. Now, this 40 acres that you sold Harnage, didn't you have some agreement to sell that 40 to a man named Goodykoontz?

By Mr. Veasey: Objected to for the reason that an interrogation concerning land not in controversy is irrelevant.

Objection noted.

A. No sir, I don't know. That was what Goodykoontz offered me.

Q. Offered you?

A. Offered me \$300.00 and keep the place three years.

224 Q. And you were going up to sign the bill of sale?

A. No sir, I wasn't.

Q. Hadn't started up there at all?

A. No sir, I hadn't. Goodykoontz offered to take all of my improvements off and just leave the fence.

A. For three hundred?

A. Yes sir.

Q. And you started up to sign the papers?

A. No I didn't.

Redirect examination.

By Mr. Veasey:

Q. When did you first come to the country near Bartlesville?

A. About thirty years ago.

Q. Did you bring Mary Thursday with you or did you marry her there?

A. No, I married another woman. This is my third wife.

Q. How long ago did you marry Mary Thursday?

A. About seventeen years ago.

Q. How long before that had you lived with her?

A. About eight or nine years.

Q. Where do you live now? On what part of the land?

A. I live south of Bartlesville, nearly a mile.

Q. Live on the 160 you filed Mary on?

A. Yes sir.

Q. How long have you and Mary and Sam Bob lived there?

A. Lived there about thirteen or fourteen years.

Q. How long did you live down on the place you sold to Harnage? Before that—immediately south of the 160?

A. I don't remember just exactly how long. We have moved twice.

Q. As a matter of fact, haven't you been living on your place near Bartlesville for the last 25 years?

A. More than that.

Q. And have had Sam Bob there during his entire life?

A. Yes sir.

Q. Never lived elsewhere?

A. No sir.

Q. When you bought this land from Keeler & Johnson in 1903, Sam Bob's and Mary Thursday's money paid for it?

A. Yes sir, some of the old lady's.

Q. The land which you bought from Keeler & Johnson, including the 80 acres Fred McDaniel bought from you, and including the 80 acres in this case?

A. Yes sir.

By Mr. Hastings: Contestant objects to this line of examination because it is not re-direct for the reason that the entire line of this examination was gone over by this witness when first on the stand.

Noted.

Q. Also included the 80 acres you filed on?

A. Yes sir.

225 By Mr. Hastings: Objected to because the same is leading.
By the Commission: Objection noted.

Q. Which 80, Wallace, have you intended for the allotment of Sam Bob, that is in the beginning?

A. The 80 that we are on now.

Q. It was your intention to file Sam Bob on the north 80, the land that is in controversy?

A. Yes sir.

By Mr. Hastings: Objected to because it is leading.
By the Commission: Noted.

A. I wanted him to have his on the north side.

Q. Was any building on the 80 you filed on?

A. No sir.

Q. The 80 you filed Sam on, are there any buildings?

A. Yes sir, a log house; two box houses on the side and barn and crib.

Q. Where did you intend filing when it was your intention to file Sam on the north 80, Wallace?

A. Right south of him.

Q. Where did you intend to file Mary Thursday?

A. On the 160 right south.

Q. Having your three allotments right together?

A. Yes sir, that was where we surveyed it.

Q. Why did you sell that 80 acres to Heady?

A. Because they said I could not hold it, and if I could not hold it I was fixing it so we would not have any disturbance between somebody between the boy and his grandmother, and I thought it best to let the north 80 go, so we would have no disturbance, and I concluded to let the north 80 go.

Q. If you could not hold your rights, you intended filing Sam on the 80 next to his grandmother?

A. Yes sir.

Q. These people told you you could not hold your rights?

A. Yes, sir.

Q. And it was that which induced you to sell that 80 acres?

A. Yes sir.

Q. Wallace, you remember talking with me at Bartlesville shortly after this trade with Heady about your citizenship?

A. Yes sir.

Q. Wasn't it I who advised you that your citizenship hadn't been determined, and that you still had a chance to get it?

By Mr. Hastings: Objected to as being clearly inadmissible—a conversation between a lawyer and his client on the same side.

By the Commission: Objection noted.

A. Yes sir, I believe it was; I know it was, now, since you bring it to my remembrance. Mr. Evans and Mr. Gray, they never had told me anything about it.

Q. Didn't I at that time advise you to take steps to pay back the \$2,700. and file Sam Bob on the north 80?

A. Yes sir.

Q. The one you originally intended to file him on?

A. Yes sir.

Q. And stand on the other 80—that is, in case you got your citizenship?

A. Yes sir I believe that is right.

Q. Has Mr. Evans or Mr. Combs or Mr. Harned or Mr. Gray ever wanted to buy any part of your land down there?

A. Only for oil leases.

Q. Wanted a lease for oil purposes?

A. That is all.

Q. Never wanted to buy your land to deprive you of an allotment?

A. No sir, they said they would help keep anybody from buying.

Q. You didn't know to whom you sold when you signed
226 that bill of sale?

A. No sir, I certainly did not; I didn't know anything about it.

Q. It was after that that Heady came back and raked up this old acquaintanceship—that you knew his wife some time ago?

A. Yes sir.

Q. It was after that that he told you your citizenship was as good as his?

A. Yes sir, and that changed my mind.

Q. Wallace, were you so sick at that time that your memory of the conversation is not what it might have been, when these people had you sign that bill of sale and did this trading—were you pretty sick at that time?

A. Well, I was in the house there long before this improvement was made. I don't know whether I was sick or not.

Q. Were you so sick that it effected your memory in a way?

A. I thought perhaps I would not get well, and that the best I could do for the old woman and the boy would be best that I would take the money and put it in the bank, and they could live a few years anyway.

Q. Isn't it true that you didn't have a written contract with the Delekee Oil Co. to lease the land before you filed—a verbal understanding, wasn't it?

A. Yes sir.

Q. After you filed you took steps before the Court to lease a part of your wife's allotment to them and a part of Sam Bob's allotment?

A. Yes sir.

Q. Both of these proceedings had been submitted to the Court, hadn't they?

A. Yes sir.

Q. The petition which you signed in Tahlequah, asking permission to lease that allotment, was after you filed?

A. Yes sir, after I filed.

Q. Upon land, as you understand, that you had filed Sam Bob, on the north 80?

A. Yes sir.

Q. The land which you sold Custis Harnage was your surplus land that you could not hold?

A. Yes sir.

Q. The same is true of the land that you sold to Lannom?

A. Yes sir.

Q. If Heady succeeds in this contest case, either you or Sam Bob is out of an allotment, isn't that the case?

A. Yes sir.

Q. Will have to go somewhere else for his allotment?

A. Yes sir.

Q. Never lived elsewhere?

A. No sir.

Q. Neither has Sam nor the old lady?

A. No sir.

Q. Isn't it true, as a matter of fact, Wallace, that for two or three weeks during the month before the sale to Heady that people were coming to see you every day about leasing the land, bothering the life out of you?

A. Bullitt was there talking to me about this land. I didn't believe these people could hold back. I asked them if they saw Bullitt; they said no. He had just stepped out of the trade. He said I am sorry to see you in your box. He began telling me about people wanting to take the land, and if I got any way cramped, to let him know and he would assist me any way he could.

Q. Wallace, you are perfectly willing to give back that \$2,700, any time and keep the land yourself?

227 A. Yes sir, it is Mr. Johnson's money, I believe.

Q. You will pay back the money and keep the land for Sam Bob?

A. Yes sir.

Recross-examination.

By Mr. Hastings:

Q. Are you in the habit like a boy of ruing every day when you get dissatisfied with a trade?

A. I am not in the habit of it, but it seemed it was smart work to get it away from me.

Q. If you buy a horse up there now and are dissatisfied with the trade, are you in the habit of ruing back?

By Mr. Veasey: Objected to as irrelevant and immaterial.

By the Commission: Objection noted.

A. If a man tells a man something that was to cause him to change to rue back.

Q. Are you in the habit of doing that?

A. No sir.

Q. You go to a store and buy a thing one day and take it back the next?

A. If it doesn't suit me, of course I take it back.

Q. Did you go back and try to rue back on C. L. Harnage after you found out the land was worth two or three times as much as you got for it?

A. That was from my allotment.

Q. You didn't try to rue that back?

A. No sir.

Q. Didn't try to rue back with Fred McDaniel on the 80 north of the land in controversy when it was worth five times as much as you got for it?

A. No sir, I didn't, because that was from the allotment.

Q. Well, if you lost your citizenship this was from your allotment, too, this 80 acres.

A. Yes sir.

Q. It was all right in some cases, but afterwards you became dissatisfied and wanted to change back.

A. Yes sir. I will show you why it is; the reason why. Because they said I was doubtful and as soon as they got the land, they said I was a citizen again.

Q. Who said that?

A. Mr. Heady come back and told me himself.

Q. You knew Mr. Heady had gotten the land?

A. Yes sir, that was it; I didn't know who had gotten it that night.

Q. But the attorney for this oil company, Mr. Veasey, told you different, didn't he?

A. He told me that I had a chance to get citizenship.

Q. How long after this sale to Heady's wife?

A. I don't know just exactly what time it was.

Q. Who introduced you to Mr. Veasey? Did he hunt you up?

A. His office is right close along where I pass every day.

Q. Did he call you in or how did you get to see him?

A. I don't know just exactly.

Q. Did Veasey take you in there?

A. Well, sir, I cannot tell you.

228 Q. Did you see Evans in there when you went into Veasey's office?

A. I cannot tell you.

Q. Did you see Gray or Combs in there?

A. Comb's office is right joining Mr. Veasey's; I guess Combs was in his office.

Q. Who else was in Veasey's office when you went in there, and talked about ruing back this trade on this land?

A. Why I don't recollect. I can't tell you.

Q. You didn't pay Mr. Veasey anything for his advice—for his advice in there that day? Never paid him, employed him as your attorney?

A. He was acting as my attorney when he was down here before that.

Q. Before that? How long before that?

A. Before we come down here to file.

Q. But this was before you filed, wasn't it?

A. Mr. Veasey didn't move up there until after we filed.

Q. Then, you never saw him until you filed down here?

A. Yes sir, I saw him up there, he didn't have an office there.

Q. Never talked to you about the citizenship business?

A. Yes sir.

Q. Had you with him up there?

A. Yes sir, I told him I would like for him to attend to my business for me.

Q. Did he come down here to help you do this filing on this land?

A. You understand more than I do.

Q. Did he come down? I am not asking about understanding.

A. No, he didn't come down particularly for to see.

Q. Was he here that date?

A. Yes sir, he was once in a while in the house.

Q. And advised you about it?

A. I don't recollect.

Q. He told you what 80 to file on for yourself and what for Sam Bob, didn't he?

A. Well, he may.

Q. He was attorney for the Delekee Oil Co.

A. Yes sir.

Q. The Delekee Oil Co. paid him, didn't it?

A. Yes sir, I don't know.

Q. The Delekee Oil Co. paying him for his services in this case?

A. I guess he is.

Q. You didn't agree to pay him, never have paid a dollar?

A. All the balance is that way, not only him.

Q. They are paying all the expense of this contest, are they, the Delekee Oil Co.?

A. I guess so.

Q. They have agreed to do it, haven't they?

A. Well—

Q. They told you before you filed that if you would file that way, they would stand behind you?

A. I don't know.

Q. Was it your understanding that they were to pay all the expense of this thing, if you filed that way?

A. They may have told you so; I cannot tell you if they did.

Q. Evans tell you that;—Veasey tell you that?

A. He has made—I don't know.

Q. Did he tell you that—answer it yes or no.

A. No, I don't know that he told me that.

Q. You did sell 40 acres to Custis Harnage, down below didn't you? Did the land you sold C. L. Harnage have a good house on it?

A. Yes sir.

Q. How much was improved of this 40?

229 A. About 10 or 12 acres in cultivation.

Q. When did you sell that to him?

A. Last March.

Q. That was after the Supreme Court decision, determining how much Delawares were to get in this country?

A. Yes sir, just a little before.

Q. Now, why is it, Wallace, that you would let Custis Harnage, let him have 40 acres for \$530.00, and Heady's wife 80 acres for

\$2,700—why do you want to go back on the trade that you got more money out of than the other trades?

A. Here is the point. You speak about Heady's wife—this was put in for allotment for the family; that other was from the allotment.

Q. It wasn't from your allotment, if you lost your citizenship.

A. Yes sir, it was.

Q. If you lost your citizenship, you could not get the 80.

A. Yes sir, if I lost.

Q. You could not take it.

A. No sir, I could not. That is the reason I thought I had better get something out of it.

Q. That is the reason you didn't get something out of it—\$2,700?

A. Yes sir.

Q. Well, you were at Bartlesville and before you filed upon this land, you never offered or tendered this land back to anybody before you filed on it and before the 5th day of May?

A. Heady and Bullitt came back and wanted to know what I was going to do and I told them.

Q. You never tendered back this \$2,700.00 before you filed, did you?

A. No, I don't believe I did. They asked me once and I told them if they hadn't been to court, I could do something, but they had put it in court.

Q. That was after you filed on it, wasn't it? It could not go into court until after you filed?

A. I don't know.

Q. Don't you know it wasn't in court until after you filed on it and they filed contest?

A. I believe it was before.

Q. So it was afterwards, wasn't it. Don't you know you never tendered them back that \$2,700.00 until after you filed on it? While at Bartlesville, before you filed on this land did you tender Heady back this \$2,700?

A. No sir, I didn't offer it to them. When they came down there they didn't want the money back.

Q. Now, then, about two days after this trade was consummated and this bill of sale executed, it was before you became dissatisfied with the trade, wasn't it?

A. A day and a half after it.

Q. About a day and a half or two days after that you became dissatisfied with the trade, wasn't it?

A. A day and a half after it.

Q. About a day and a half or two days after that you became dissatisfied?

A. Yes sir, because they took the money and the bill of sale, too, and that made me doubtful.

Q. You got your money, didn't you?

A. Yes sir, I got it.

Q. Accepted it?

A. They put it in the bank, the money.

Q. After you became dissatisfied, you went to the Bartlesville National Bank, accepted the \$2,700 and placed it on deposit and let it draw 4%?

230 A. That was about it, put it on per cent.

Q. Didn't you have a talk with Johnson and place this money on deposit at 4%?

A. He says when this money comes back, I will put it on deposit at per cent.

Q. Didn't you ever get a certificate of deposit?

A. They put it there.

Q. Haven't you already sworn that you had it and had it at home, and afterwards took it back there and put it in the vault?

A. You are speaking of before that.

Q. I am talking about that. Then you did get a certificate of deposit afterwards?

A. Yes sir.

Q. And you did place that certificate of deposit in the vault didn't you, for safe keeping, as you have already testified?

A. Yes sir, I believe I did. That \$300.00, though, I don't know what became of that.

Q. Now, if you were dissatisfied a day and a half or two days after the trade, why, after that, did you accept this thirty dollars from Mr. Heady for the grass?

A. I hadn't made up my mind yet, and a man can be dissatisfied for a good while before making up your mind to start.

Q. Why, if you were dissatisfied some ten days or two weeks later, did you deposit that money there on certificate of deposit, drawing 4%. Why did you do that?

A. That was the first paying that money in the bank. I went in the bank and asked where was the money and he said he sent it off. Why don't you let me keep it and I will give you 4%. That was the time; it was not 10 or 12 days.

Q. You accepted it, didn't you?

A. Yes sir, I told him as soon as he got it, it was there.

Q. You did accept it, didn't you?

A. Yes sir, but it wasn't ten or 12 days.

Q. Before 10 or 12 days?

A. Yes sir.

Q. Was the money paid within the 10 days?

A. I don't know. Only it was gone when we talked this way; it was in St. Louis.

Q. Wallace, in the meantime, didn't you go up to Julian's office a time or two, and didn't you send Sam Bob and didn't you send some other fellows to see whether the money had been paid in there?

A. Now you are coming to it. That was sometime after the bill of sale. He told me to send Sam up there and Sam could not find him and he got the fellows to help him hunt him.

Q. Did they ever go there afterwards?

A. Not that I know of.

Q. Did you go?

- A. Yes, I went to hunt the money and it wasn't there.
Q. So he told you it was all right, did he?
A. No, he said I would get the money.
Q. You didn't express any disappointment?
A. I don't know. He said I would get the money and I told him I wanted to see the bill of sale because I knew he didn't have it.
Q. How long was that after the trade?
A. I forget; I was sick.
Q. About how long?
A. It wasn't many days.
Q. One day?
A. Longer than that.
Q. You did finally, tho, receive the money and place it on deposit there at 4% at the Bartlesville National Bank?
A. I put it in there when I first went to look at it, Johnson
231 said I will put it there.
Q. He gave you a certificate of deposit and you accepted it?
A. Yes sir.
Q. And you have got that yet up there in the bank for safe-keeping?
A. I don't know whether it is in that bank or not.
Q. Have you turned the money and the land all over to the Delekee Oil Co.?
A. No.
Q. You don't know how much you are going to get out of this land from the Delekee Oil Co., for oil lease on it?
A. I am not selling no land.
Q. How much are you going to take of the oil lease?
A. I am getting a per cent, I reckon.
Q. How much, do you know? You don't have any idea?
A. The Secretary will fix that up.
Q. You haven't made any agreement about it?
A. Yes sir, we have an agreement.
Q. How much?
A. We get 10%, I reckon that is as much as——
Q. No bonus?
A. Yes sir, get a bonus.
Q. How much?
A. I don't know just how much.
Q. They never did tell you?
A. Yes sir, they got an agreement for the secretary's orders for bonus.

Redirect examination.

By Mr. Veasey:

Q. Wallace, both leases, part of your wife's land and part of Sam's allotment, submitted to the Court and you received \$800.00 from the Delekee Oil Co. as a bonus?

A. Yes sir.

Recross-examination.

By Mr. Hastings:

- Q. Have you received it?
A. No, not all of it.
Q. How much have you got?
A. \$200.00, I believe.
Q. Who paid it to you?
A. Gray.

Redirect examination.

By Mr. Veasey:

- 232 Q. Wallace this is a check presented here with your name signed to it, paying \$2,700.00 to the Dawes Commission. You heard them refuse it, didn't you?
A. Yes sir.
Q. You are willing that this check should remain in the possession of Mr. Ross, Cashier of the bank, to be paid the Dawes Commission, when they will accept it, aren't you?
A. Yes sir.

(Witness dismissed.)

L. C. Ross, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Veasey:

- Q. State your name?
A. L. C. Ross.
Q. Your age?
A. 32.
Q. Your residence?
A. Tahlequah, I. T.
Q. What is your business, Mr. Ross.
A. Cashier of the First National Bank, Tahlequah.
Q. Are you acquainted with Wallace Thursday?
A. Well, he was introduced to me at the bank the other day.
Q. Did he make a deposit at your bank?
A. He got a certified check there.
Q. And that was placed on deposit in your bank to his credit?
A. No, the check wasn't deposited; he simply deposited another and got a certified check for \$2700.00.
Q. The \$2700.00 now stands to his credit in your bank?
A. For the payment of the certified check.
Q. Examine this instrument and say whether or not it is the check you certified and whether it is your signature as Cashier of the First National Bank?
A. It is.

Cross-examination.

By Mr. Hastings:

Q. Mr. Ross, who had this money in possession when you first knew of it and who transacted this business, who did the talking?

A. Mr. Veasey is the man who introduced Thursday to me and Thursday had the money. I will say, of course, that it was a certificate of deposit.

Q. What bank was the certificate of deposit on?

A. Bartlesville National Bank.

233 Q. Was that time certificate of deposit?

A. Yes sir.

Q. Do you remember the date of it?

A. I do not remember positively. I think it was April 13; it might have been a little before.

Q. Wasn't it a six months' issue, certificate of deposit?

A. Yes sir.

Q. Then the time wasn't up until the 13th of this month for him to draw it out?

A. No.

Q. How did he draw it out of your bank down there before the 13th of the month?

A. I took up the time certificate of deposit.

Q. And you cashed that yourself?

A. Yes sir.

Q. Mr. Veasey was with him?

A. Yes.

Q. And he explained the transaction, did he?

A. Yes.

Q. The fact of the business is all of the talking was done by Mr. Veasey and Mr. Thursday just gave his consent to it as they went along?

A. I think that was about it, as near as I remember. I wasn't paying much attention to that part of it. Mr. Thursday was the man who handed me the paper, which was first cashed and afterwards a certified check was issued.

Q. Do you know in whose handwriting this certified check is? Isn't yours, is it?

A. No sir.

Q. Do you know Mr. Veasey's handwriting?

A. Well, I don't know that I could swear to it.

Q. Isn't this his signature in the corner?

A. Yes sir.

Q. The writing is the same as the signature?

A. It appears very much the same.

Contestee rests.

Testimony in Rebuttal on Behalf of Contestant.

By Mr. Hastings: Contestant desires to offer in evidence a certified copy of a lease executed by Wallace Thursday, guardian of the person and estate of Sam Bob, alleged to have been executed the 16th day of May, 1904, to the Delekee Gas & Oil Co., on the NE4 of SW4 and the NW4 of SE4 of Sec. 13, Twp. 26 N., Range 12 E.

By the Commission: The paper is received in evidence and marked for identification contestant's exhibit "B."

234 WILLIAM FIELDS, being first duly sworn, and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. William Fields.

Q. Your Post Office?

A. Bartlesville.

Q. Your age?

A. 54 14th day of last May.

Q. Do you know Wallace Thursday?

A. Yes, sir.

(Objection inserted here to exhibit Contestant's B.)

Mr. Veasey: I object to exhibit "B" on account of its irrelevancy.

By the Commission: Objection noted.

Q. Do you live on Wallace Thursday's or his wife's place?

A. Yes sir.

Q. How long have you lived there?

A. Five years the first of March.

Q. How far is your house from where Thursday lives?

A. Just a little over a quarter.

Q. On April, 1st last and prior thereto, did you frequently visit Wallace Thursday's place?

A. Yes sir, there most every day.

Q. Did you know the extent of his land? You knew his lands before that time?

A. Yes sir.

Q. Did you know some land that he sold to C. L. Harnage?

A. Yes sir.

Q. Know some he sold to Miller?

A. Yes sir.

Q. Some he sold to McDaniel?

A. Yes sir.

By Mr. Veasey: Object to the introduction of this part, because we did not controvert these facts at all.

By the Commission: Objection noted.

Q. Do you know some land that he let Lannom have?

A. Yes sir.

Q. Do you know how much he got for the 40 acres of land he let Harnage have?

A. Yes sir.

Q. How much?

A. \$530.00.

235 Q. Do you know whether he previously contracted this to Goodykoontz?

A. Yes sir, he had.

Q. How much was he to get from Goodykoontz?

A. \$300.00.

Q. Did you advise him to sell off this?

A. I did.

Q. Did you aid him in getting more than that for it?

A. I think I did.

Q. What did he finally get for it?

A. \$530.00.

Q. Up to this time you and Thursday were on good terms, weren't you?

A. Yes sir.

Q. Friendly?

A. Yes sir.

Q. You were about his place frequently and he about yours?

A. Yes sir.

Q. No friction?

A. Not that I know anything about.

Q. Had you heard up there that Mr. Thursday's citizenship was questioned?

A. Heard that for a good while.

Q. There had been a great deal of talk through the country about it?

A. Yes sir.

Q. There had been a great many people to see him out there, had there not?

A. Yes sir.

Q. Did you know, once, a Baptist preacher up there, named Evans who now belongs to the Delekee Oil Co.

A. Don't know what — belongs to, but I know Mr. Evans.

Q. It is your understanding that he is connected with the Delekee Oil Co.

A. Yes sir.

By Mr. Veasey: Objected to because it is not positive evidence at all.

By the Commission: Objection noted.

Q. Know Mr. Leslie Coombs?

A. Yes sir.

Q. Know Mr. Gray?

A. Yes sir.

Q. It is generally understood that they belong — or are interested in the Delekee Oil Co.

A. Yes sir.

Q. Do you know Mr. Veasey.

A. I heard of him.

Q. It is generally understood that he is attorney for the Delekee Oil Co., isn't it?

A. Yes sir.

Q. Did you ever see Mr. Evans at or about Mr. Thursday's place prior to the 1st day of April, 1904?

A. Yes sir, he was there several times.

Q. Do you know what was the purpose of his frequent visits out there?

A. Yes sir, I do.

Q. Well, what?

A. The first time he came out there, he came with Mr. Gray, and Mr. Evans and three or four men from Arkansas City, Mr. Coonrock was one.

236 Q. What did they come for?

A. They came out to lease some land.

By Mr. Veasey: We submit to the Commission that questions in this regard are irrelevant and immaterial.

By the Commission: Noted.

Q. Did you hear any of the conversation between Thursday and these parties? Was — in regard to a lease, getting an oil lease on the land?

A. Yes sir.

Q. Did you see any other parties when they came out there to buy this land of Thursday or lease it?

A. Yes sir, I seen several parties but I don't know any of them.

Q. You know when Ex-Chief Buffington was out there?

A. Yes sir, but I didn't see him.

Q. Did Thursday tell you about it?

A. Yes sir.

Q. Did Thursday tell you about others wanting to buy or lease it?

A. Yes sir, he said there was a man asked him every day to buy or lease.

Q. How much did he say was the most they offered him?

A. To lease or buy?

Q. Either.

A. Buffington offered him \$1700.00 for this 80.

Q. Thursday told you this?

A. Yes sir.

Q. Was he going to take this \$1700.00?

A. Why no, I don't think that he was. He said that he thought it was worth more money, and Mr. Buffington — him when ever he got ready to sell to give him a chance at that.

Q. Did he ever ask you to notify Buffington?

A. Yes sir.

Q. When?

A. I can't tell you the day of the month or anything, but it was on Monday morning.

Q. Tell what he said about it.

A. I asked him what he would take for this place; he said I was offered \$1700.00, but he said I want more than that out of it. I said "Wallace, I believe I can help you sell the place." He said I want you to let Buffington know on Monday morning; I told him I would go down and see if I could find where he lives. If I can I will write or telegraph him. I asked two or three and couldn't find out and I went over to the First National Bank. Mr. Booker said his home was in Vinita, but he didn't know where he was. He said what are you hunting Buffington for? I told him about this piece of land. He said "Why let me settle the matter; I want a finger in the pie." He said what do you want, \$2500.00; I said Thursday wanted \$2250.00.

Q. He tell you that?

A. Yes sir. All over \$2250., I could have.

Q. Asked you to find a buyer?

A. Yes sir. I told Frank and he said wait a little while and let me study over it. Directly after the bank opened, between nine and ten o'clock in the morning. So I waited until pretty near noon and went into the bank, and Mr. Booker and Mr. Lannom and two or three strangers were in there.

Q. No trade was consummated?

237 A. No, none at all.

Q. Did you send for Chief Buffington?

A. No, I didn't. Because I couldn't find out where he was, so I went on back and told Wallace that I couldn't find out where Buffington was, and told him what I had said to Mr. Booker.

Q. What did he say?

A. He said I would like for Buffington to have a chance at it. Before I seen Mr. Booker any more, Mr. Moran and Mr. Heady come down, and I happened to be setting in the house when they come. Mr. Moran commenced talking to Mr. Thursday about the land.

Q. Was Heady with Moran?

A. Yes sir, we were all there in the house. They talked a while about it and Mr. Thursday said to him there has been several ahead of you, and you will have to wait until your turn comes. Mr. Moran says I reckon you want to get all out of it you can, and he said first what have you been offered. He said \$1,700.00. Mr. Moran said I will beat that way yonder. I spoke up and says I was offered \$2,500.00 that Monday.

Q. Thursday said that?

A. No, I did. He said I will give \$2,700.00 for it. So Wallace told him he would have to study over it, and that he would see about it. And that was all the conversation.

Q. They left, did they?

A. Yes sir, they left.

Q. Did they come back any more that day?

A. Yes sir.

Q. You got them to come back?

A. I went to town after them.

Q. Why did you go?

A. Mr. Thursday got the notion he would sell the land and told me to go up and bring them down.

Q. And you did go?

A. Yes sir.

Q. At his request?

A. Yes sir, and bring a Notary Public to make out the bill of sale.

Q. Was it discussed what land Thursday was going to sell?

A. Yes sir, but I can't tell you anything about it — the numbers.

Q. But you know where the land lay?

A. Yes sir, I had been farming a part of the land.

Q. What part of the land?

A. The 80 joining Fred McDaniel on the south.

Q. The north 80 of his holding?

A. Yes sir.

Q. Why did he want to sell the north 80?

A. I can't tell you. In the first place, all of the other 80 was called Sam Bob's.

Q. Why did he want to sell the north 80 and keep the south 80?

A. The other 80 was the best land and Sam said he — rather have it.

Q. The south 80?

A. Yes sir. Said he wanted to get his land next to his grandmother's.

Q. And the grandmother's was still south of that?

A. Yes sir.

Q. Well, did you go down and tell Mr. Heady and Mr. Moran that Thursday had sent for them?

A. Yes sir.

Q. Did they go out there that night?

A. Yes sir, they did.

Q. Were you there that night also?

A. Yes sir. I taken Mr. Heady out in the buggy with me.

238 Mr. Moran and Mr. Julian come in the buggy right behind us.

Q. You came out first?

A. Just a few minutes before they did, and we stood in the yard and talked until they drove up.

Q. Mr. Fields do you read and write?

A. I can read print.

Q. Say you can write?

A. No sir. I can sign my name.

Q. Did they discuss the terms of this trade?

A. Yes sir. They talked it all over before Mr. Julian went to do any writing.

Q. About how long did they stay there?

A. I don't believe they were there over an hour all together.

Q. Was Sam Bob in the room?

A. Yes sir, he was.

Q. He heard the trade discussed, did he?

A. Yes sir.

Q. Was this bill of sale read?

A. Yes sir.

Q. And Thursday thoroughly understood it, did he?

A. I think so.

Q. You didn't read it but you heard it read?

A. Mr. Julian read it over a couple of times.

Q. Thursday authorized his "X" mark to it?

A. Yes sir.

Q. Touched the pen?

A. Yes sir, after Mr. Julian read it over, he said it was all right. And I believe Mr. Heady or Mr. Moran asked him and he said it was.

Q. What was the consideration?

A. \$2,700.00.

Q. How much to be paid down?

A. \$300.

Q. And when was the rest to be paid?

A. Inside of 10 days.

Q. Was it said in there, said in the bill of sale, who was buying the land, in whose name?

A. Yes sir.

Q. Whose was it?

A. Mr. Heady's wife and children.

Q. For his wife?

A. And children yes I know that is the way in the bill of sale.

Q. That is your recollection of it?

A. Yes sir.

Q. Anything said about Heady's wife being a Delaware?

A. Yes sir.

Q. After that time how long did you and Thursday stay upon good terms?

A. Two or three weeks.

Q. He was sick in bed. Did he ever send you to town to see whether this \$2,400.00 was paid up, or did you go with Sam Bob?

A. I went up there the next morning. In the first place, they gave a check for \$300.00, and this three hundred was to be paid inside of ten days, and Mr. Julian told Thursday he would take it up there and deposit it in the bank to his credit, and he asked him if he had a time book or something I did not understand exactly, and he went up there and told Thursday tomorrow if the boy is up I will send you out a book. Sam went down to get the book and they told Wallace there was no book, that Mr. Julian didn't give him any book. Wallace and me was talking and he said there might be something wrong. I said I am going down this evening, and I will find out something about it. He said I wish you would. I went into Mr. Julian's office; he spoke something about it, and said you reckon Wallace is dissatisfied. I said no he is not at all. He told me I can show you I deposited in the bank to his credit, and said the reason he didn't get the book and send it, they told him Wallace had got

other money deposited. I said I didn't hear anything about it, and don't believe Thursday knowed anything about it. He 'phoned to the bank and they told him they had money deposited there before this \$300.00; I told Wallace.

Q. Did you see Evans or any member of the Delekee Oil Co. there after that date?

A. There pretty near every day.

Q. Just hanging about there were they?

A. I have seen Mr. Evans there twice a day.

Q. Was he ever dissatisfied until some representative of the Company came out there after that?

A. I never heard him say.

Q. Did you go with Thursday or were you with Thursday in town after that to see whether this \$2400.00 was placed to his credit as agreed upon?

A. Yes sir, I taken him to town myself Monday morning. We went to Mr. Julian's office in the first place. Mr. Julian told him he deposited the money in the bank to his credit Saturday evening. Mr. Thursday said why didn't you keep it here, I didn't want it put in the bank. Mr. Julian said "Do you think I would be running around here with \$2,400.00 in my pocket?" Mr. Thursday went to the bank to find out if he deposited it there, and they said they would have to send the check to St. Louis, and it would not be back until Thursday.

Q. It was a check on the bank in St. Louis and sent there for collection?

A. Yes sir, understood so.

Q. Did you go back there?

A. Yes sir.

Q. And you and Thursday got it and placed it on certificate in the Bartlesville bank, didn't you?

A. That same day.

Q. After this bill of sale was signed, who took possession of this 80 acres in controversy?

By Mr. Veasey: That is examination in chief; that is not rebuttal at all.

By the Commission: Noted.

A. Mr. Heady.

Q. Was there a fence built along the south side of it, cutting it off to the north?

A. Yes sir, built it the next morning.

Q. Who built that?

A. Mr. Heady and two or three other hands; I don't know who. One of Buford's hands.

Q. How far is this land from where Mr. Thursday lived?

A. A little bit over a mile.

Q. Do you know whether Mr. Thursday knew it was being cut off?

A. Yes sir.

By Mr. Veasey: Objected to for the reason that it is bound to be hearsay.

By the Commission: Noted.

240 Q. Do you know whether Sam Bob was out there at any time that this line was being run through?

By Mr. Veasey: Objected to as immaterial and irrelevant.

By the Commission: Objection noted.

A. I don't think he was out where they were building the fence, but went right up along the line where they were running the fence across to join.

Q. He could see them?

A. Yes sir.

Q. While the fence was being built?

A. The same day.

Q. The land was in plain view?

A. Yes sir.

Q. You know about the time Thursday started to town here to file?

A. Yes sir.

Q. Were you in Bartlesville that day?

A. I was.

Q. Who did you see with him?

A. Mr. Gray and Mr. Evans and Mr. Combs started off from Gray's store with him and that was as far as I seen him; I was going into town as they started out of the store.

Q. You didn't come down here with them?

A. No sir.

Q. Had you heard any discussion between Thursday and Sam Bob as to where Thursday was going to file Sam before he started down here?

A. Yes sir.

Q. Tell. What do you know.

A. I heard them talk several times.

Q. After the bill of sale was signed.

A. Yes sir. Sam wanted the south 80 next to his grandmother's.

Q. Thursday agreed to file him there?

A. Yes sir.

Q. That was the understanding when he left there?

A. Yes sir it was.

Q. Did Sam Bob come with Thursday?

A. No sir, he didn't.

Q. But it was understood between Thursday and Sam Bob when Thursday left here to come down here to file that he was going to file Sam Bob on the 80 acres south of the land in controversy?

By Mr. Veasey: Object to the form of the question. He cannot testify as to the understanding of some one else.

By the Commission: Noted.

A. Yes sir.

Q. What did Sam say about it?

A. In the first place he was talking over the land and Sam just said That is the best 80 down there, and Wallace said something about the improvements on the other 80 and Sam said the improvements don't amount to much and this is the best 80, the land down here. I talked to them every day or two about it. I was like Sam; I rather have the other 80 for farming purposes.

241 Q. Sam said he wanted to be up next to his grandmother?

A. Yes sir.

Q. Was it about the time Wallace came down here to file?

A. Yes sir, heard him state it every day or two.

Q. Mr. Fields what was really the occasion of Thursday's falling out with you?

A. Why it was over a part of this money.

Q. Were you to have anything for assisting him in selling this 80 acre tract of land in controversy?

A. Yes sir.

Q. What did he agree to give you?

A. All over \$2250.00.

Q. Then he sold it for \$2,700.00?

A. Yes sir.

Q. Did he decline to pay you anything?

A. Yes sir.

Q. Is that really the occasion for his being mad with you now?

A. I believe so; I don't know anything else.

Q. No other reason for any friction between you and Wallace Thursday other than his refusal to comply with this agreement?

A. No sir.

Q. You asked him for this surplus money, didn't you?

A. Yes sir.

Q. And he declined to give it to you?

A. Yes sir.

Q. Now it was known that night, when the bill of sale was drawn up that it was this 80 acres of land immediately south of Fred McDaniel's?

A. Yes sir.

Q. And that was the 80 that Heady took possession of?

A. Yes sir.

Q. Could not have been a misunderstanding about that, could there?

A. No sir, I think not.

Q. When did you learn after this that Wallace Thursday was going to try to rue back this trade?

A. I never heard of him wanting to rue back at all.

Q. Didn't you know it until after he came down here?

A. I knew he came to file on the land.

Q. Didn't know he was going to do it until after he filed?

A. No sir.

Cross-examination.

By Mr. Veasey:

- Q. You just have \$450.00 in this \$2,700.00, haven't you?
A. It ought to.
Q. What is your business?
A. I am farming.
Q. How much do you make a year?
A. That depends upon the season.
Q. In good seasons, how much do you clear?
A. I can not tell you.
Q. But you do know that you made \$450.00 in this case, don't you?
A. No, I don't know that I did make it; I never got it.
Q. What did you do in order to earn this \$450.00?
A. Well, I don't know that I did very much. I made several trips to town, trying to sell the place for Mr. Thursday.
Q. And you are entitled to \$450.00—that amount of money?
A. I think, sir, I ought to.
242 Q. You know Wallace Buford, don't you?
A. I do.
Q. You say it was one of Wallace Buford's men who helped to fence this 80 acres?
A. Yes sir. Mr. Heady come down to my house when he hauled the wire out; he helped haul posts over for Mr. Heady and Mr. Heady got Buford's hands to help put in the fence.
Q. How far is your house from Wallace Thursday's house?
A. A little over a quarter.
Q. And it is your habit to be at Wallace Thursday's a good deal?
A. It was. I was there most every day.
Q. That has been your custom for the last five years?
A. Yes it has, when at home doing nothing.
Q. You were not there any oftener when you were trying to earn the \$450.00?
A. No sir.
Q. \$450.00 wasn't an inducement to get you to go there oftener?
A. I went as often as I did before.
Q. You advised Wallace in a good many of these trades, didn't you?
A. Yes sir.
Q. Sort of a father to him?
A. Not a father.
Q. You advised him in the Harnage trade and one or two others?
A. Yes sir.
Q. And in this trade?
A. I did.
Q. In their affairs you were sort of an adviser?
A. No sir.
Q. Just in regard to his land transactions?
A. I talked to him about other things.
Q. Pretty ignorant chap, isn't he?

A. No, not so very ignorant, just like me; don't know very much.

Q. You stated in your testimony that these three 80's were known as Sam Bob's land?

A. Yes sir.

Q. When did you first know, Mr. Fields, that Wallace Thursday wanted to sell a part of the land there?

A. Now, I can't tell you just when it was. It was quite a bit, though, before Mr. Heady bought it.

Q. You say you had heard a good deal of talk about his doubtful citizenship in that vicinity?

A. Yes sir.

Q. You also testified that you knew Wallace Buford pretty well?

A. I have known him five years.

Q. Did you tell Wallace Thursday that you had read or that Buford told you he had read that he was going to lose his citizenship?

A. No sir.

Q. Did you ever tell Wallace that you heard people in that locality talk about the chances of his losing his citizenship?

A. We had talked it over together, Wallace and me.

Q. On such occasions, you would tell him that the people about there said he would likely lose his citizenship?

A. That was our talk.

Q. You heard that from people in the locality?

A. Yes sir.

Q. Didn't you, on one occasion, in talking with Wallace Thursday, tell him that Buford told you that even if he did win out, 15 contests would be filed against him, and that would cost \$1,500.00 to defend them?

A. No sir, I didn't.

Q. Wallace Buford told you that, didn't he?

A. No sir.

243 Q. No conversation of that kind ever occur in which you made that remark?

A. Yes sir, it did, but I didn't call any names.

Q. Who told you that contests would be filed?

A. I can't recollect.

Q. But you do remember telling him that it would cost one hundred dollars a piece, defending the contests?

A. Yes sir.

Q. Wasn't it something to this effect that the Cherokees would probably jump all the Delaware lands, and that the Delaware- had no chance?

A. No sir.

Q. It was simply in regard to fifteen contests and the probable cost of one hundred dollars a piece?

A. Yes sir.

Q. Do you remember how long before this sale that conversation occurred?

A. No sir, I don't.

Q. You don't recall when your attention was first called to the fact that Wallace Thursday wanted to sell this land there?

A. No sir.

Q. Do you remember about how long before the Heady transaction?

A. It was a month or such a matter as that.

Q. You say you had assisted him in disposing of these other tracts—40 acres to Harnage and to Miller?

A. No sir, had nothing to do with that, and didn't know of it until it was sold.

Q. You did know about the Harnage tract?

A. Yes sir.

Q. Know, furthermore, the Harnage tract was the place Wallace made himself, the old place?

A. No sir.

Q. And you know it was some excess land that he could not hold himself; you knew that, didn't you, that was the reason he was disposing of it?

A. That was the talk.

Q. You knew how many allotments he and his family were entitled to, and that the 40 acres was in excess of that, too?

A. Yes sir.

Q. Immediately upon being informed that Wallace wanted to dispose of the 80 acres of land there, did you start out to find a purchaser?

A. Yes sir.

Q. At the time he first mentioned that fact to you, did he tell you what he would like to receive for it, did he state?

A. Yes sir, he wanted \$2,250.00.

Q. That was his price right through, was it?

A. Yes sir, from the first talk.

Q. He never varied from that in his demand at all?

A. No.

Q. With whom did you first talk in regard to the transaction?

A. Mr. Edwards, who was here as a witness the other day. I went up through the field from my house to town, and he was going along the road, and he said "What are you going to town this morning for; why aren't you at work?" I told him what I was going to town for.

Q. Who was the first likely purchaser?

A. Mr. Booker.

Q. When you were on your way to communicate with Buffington the same morning, in your direct examination you said the reason you didn't communicate with Buffington you didn't know where he lived?

A. I knew where he lived, but didn't know where he was.

244 Q. Didn't care to communicate with him because you did — know where he was?

A. If I could find him, I was to telegraph.

Q. Booker told you he wanted a finger in the pie?

A. Yes sir.

Q. To what extent did Booker want a finger in the pie? How deep would he have gone?

A. \$2500.00; he asked what I wanted, and I told him \$2500.00.

Q. He asked what you wanted?

A. He said what do you have out of the place, and I said Wallace wanted \$2250.00 and I wanted \$250.00.

Q. You told him you wanted to make \$250.00 on the trade?

A. Yes sir.

Q. You knew at that time what particular 80 Wallace wanted to sell?

A. Yes sir.

Q. You talked it over, between you and Wallace, if Wallace could not hold, Sam was to file on the 80 between him and the old lady in order to keep the 80's together?

A. Yes sir.

Q. You knew for years before it was the intention to file Sam on the north 80 until this business of losing citizenship arose?

A. No, I don't know how long it was before that this talk was about Sam taking the south 80.

Q. But before that time, Wallace had said he intended to file Sam on the north 80?

A. No, I never heard him say that he intended to file Sam on this 80.

Q. How do you explain, then, Mr. Fields, that Wallace said he wanted to file Sam on the north 80 acres where the building was there? He told you that and you have testified to it?

A. I said that was the talk between Wallace and Sam and me and Sam said the building didn't amount to anything, and he didn't want that; that the other was lots the best land.

Q. Wallace at no time did intend to file Sam on the north 80?

A. It was just talk. I didn't know that he ever aimed to or anything about it.

Q. When did you hear that talk between Wallace and Sam where Sam expressed a preference for the south 80?

A. I heard it forty times and the last time I heard it was just before he started down here to file.

Q. What were your relations at that time with Wallace—just before he started down to file?

A. Just the same as now.

Q. Not particularly good?

A. Yes sir, I think just as much of him as I ever did.

Q. You haven't been going down there, have you?

A. No, I have not been to his place lately.

Q. You stated upon your direct examination, Mr. Fields, that a few weeks after the trade you had some trouble about this \$450. and you haven't been on good terms?

A. Not quite as good terms as we had been.

Q. Was it your practise to go around there and take part in the conversation as previously?

A. No sir, had no chance.

Q. And, having no chance, you still say you heard the conversation in which Sam Bob expressed a preference for the south 80?

A. When I was down there.

Q. How did you happen to be down there?

A. Sometime one thing and some time another.

Q. How did you hear that?

A. They were out in the lot talking.

245 Q. You remained there long enough to hear that much?

A. Yes sir, about fifteen or twenty minutes.

Q. Still your relations with Wallace Thursday were not as friendly?

A. Not as it was.

Q. You still had that interest in the conversation to remain there and learn that?

A. Just like you and me standing around talking—I happen to hear it.

Q. You didn't take the \$2500.00 offer, did you?

A. No sir.

Q. Why didn't you.

A. Because we made the offer before I had a chance to get it.

Q. Did you ever talk with Mr. Moran himself or Heady about the matter?

A. Never did say a word to them. I knowed Mr. Heady fifteen years ago, when I first come—16 years ago this fall.

Q. You never had a word to say to them about this trade?

A. No, never spoke to the man from fifteen years ago until that time.

Q. You took no part in the trade when they came?

A. Never said a word.

Q. Never said a word to Wallace to encourage him to trade with these people?

A. Only what I told you I told them I was offered \$2500.00.

Q. That was all you said?

A. Yes sir.

Q. Do you often get \$450.00 for speaking four words?

A. Not very often.

Q. But you did get it on that occasion?

A. Didn't get it.

Q. You expected it—you felt that you earned it?

A. Yes sir.

By Mr. Hastings: Objected to as irrelevant and immaterial. If there was a bargain made with this man, it should be paid whether he earned it or not; the contract says or states the price for the labor.

By the Commission: Noted.

Q. You are positive that you never had anything to do with bringing about this sale between Heady and Wallace Thursday? That is the case?

A. I say I didn't have anything to do with it.

Q. Nothing directly?

A. No sir.

Q. At the same time, you think you are entitled to \$450.00 for that sale?

A. Yes sir, I do.

Q. You mean to say if Wallace Thursday had sold that during your absence to some one you never heard of, you would still be entitled to \$450.00?

A. Yes sir.

By Mr. Hastings: Objected to by the contestant as being entirely an hypothetical case.

By the Commission: Noted.

Q. Have you ever gotten anything from Heady or Moran
246 for your services in this matter?

A. Not a cent in the world.

Q. Never expected anything?

A. No sir.

Q. As a matter of fact, Mr. Fields, aren't you to get something from these people for inducing Wallace Thursday to sell this 80 acres of land there?

A. Not a cent. Never a word was ever said to me about getting a cent in the world from either one of these men.

Q. You simply get this from Wallace, \$450.00?

A. Yes sir.

Q. You knew by bringing about this sale, you would collect \$450.00?

A. Yes sir.

Q. And you were going to use your best endeavors to bring it about?

A. Yes sir, of course.

Q. If a little suggestion on your part would have caused Wallace Thursday to sell the 80 acres of land, you would not have hesitated to make that suggestion?

A. What do you mean?

Q. If you told him about 15 or 20 contest cases—you would not hesitate to put that into his ears?

A. It was just like talking about anything, and I would just say what was going to be done. Now if you have got land and you can not hold, if this is going to happen, it would be better to take twenty two or twenty three hundred than to get nothing.

Q. If what was going to happen?—Lost his citizenship?

A. Yes sir.

Q. You told him that?

A. Yes sir, that was it.

Q. When he was in bed sick, wasn't he?

A. There was nothing said about it when he was in bed sick.

Q. You say the ill feeling grown up between you and Wallace was due to you not getting the \$450.?

A. That is *was* I think about it; we had no trouble before.

Q. What do you think Wallace thinks about it?

A. Don't know.

Q. It never occurred to you that your attempt to kiss his insane wife was responsible?

A. That was his excuse; all he did it for was to keep me from getting this money.

Q. Then you never attempted?

A. No, it is all a lie.

Redirect examination.

By Mr. Hastings:

Q. He had agreed to give you all over \$2250., whether you did much work or little work—you felt like you were entitled to all over that?

A. I did, yes sir.

Q. You were there that night and by your suggestion—you said in the presence of Moran you had been offered \$2500., Moran offered \$2700.—more than \$2500?

A. Yes sir, I did.

Q. Don't you believe that was the reason of his making
247 this other offer?

A. Yes sir, I do.

Q. Don't you think your being in there caused him to offer a greater amount of money than otherwise?

A. Yes sir.

Q. And you don't know whether you earned it or not, but you would stand on the contract?

A. Yes sir.

(Witness dismissed.)

CHARLES M. CROWDER, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. Charles M. Crowder.

Q. What is your age?

A. 40 years old.

Q. Are you a Cherokee by blood?

A. Yes sir.

Q. Do you know Mrs. French Wilson, who lives here in town?

A. Yes sir.

Q. Related to her?

A. Yes sir, she is my sister.

Q. Were you about her place during the first week in May last,
1904?

A. Yes sir, about that time?

Q. Do you know Wallace Thursday, the contestee here?

A. Yes sir, I saw him; am not acquainted with him.

Q. I will ask you if he is not a colored man?

A. Yes sir.

Q. Did you see him down there about Mrs. Wilson's place along about the first week in May, 1904?

A. Yes sir.

Q. Who did you see him in company with?

A. He was down there two different times. He was there the first time with a fellow named Harnage, and another fellow I didn't know. The next time he was down there with preacher Evans and another gentleman I didn't know.

Q. This man Evans the same fellow who used to be a Baptist preacher here at this place?

A. Yes sir.

Q. Eat with him?

A. Yes sir.

Q. Kept him pretty close in, too, didn't they?

A. Yes sir, kept him in the room down there all the time.

Q. Had him in a room down there?

A. Yes sir. Stayed in the room all the time.

Q. Two or three parties with him?

A. Yes sir, two one day—darkey and another man, and the next day, the preacher.

Q. The same Wallace Thursday you see here in this case?

248 A. Yes sir, I saw him down on the street a while ago.

Q. Did you make arrangements for them to come down there?

A. I went to see her.

Q. Who asked you to do it?

A. Mr. Veasey asked me to do it.

Q. What did Mr. Veasey say to you about it?

A. He said there were some parties here who didn't want to stop at the hotel and wanted a room all to themselves.

Q. Tell you one was a colored man?

A. No sir. I went down and asked Mrs. Wilson about it; she said all right. I didn't know one was a colored man until I came down there to dinner myself.

Q. Did he tell you they had some rather valuable oil land?

A. Mr. Veasey didn't, but the other fellows did.

Q. Tell you they were caring for Wallace Thursday on that account?

A. They told me he was the wealthiest darkey in that country; his land was worth twenty-five or thirty thousand dollars, and they had to look after him.

Q. Which one?

A. That fellow Harnage, I think it was.

Q. Do you know a man by the name of Gray?

A. No sir, I don't.

Q. You don't know the other fellow's name, except Evans?

A. Except Evans and Mr. Harnage.

Q. Did you understand from them that Thursday hadn't filed yet upon the land?

A. Yes, Mr. Harnage told me so; he had him there that time.

Q. Tell you anything about his having sold part of the land?

A. No sir.

Q. How long did they stay down there?

A. They were down there the first day. I guess a couple of hours; maybe longer. The next day the same length of time.

Q. Know where they slept?

A. Don't know.

Q. Didn't sleep down there?

A. No sir.

Q. Did you ever see this man Wallace Thursday around here during that week that one of these fellows wasn't after him?

A. I noticed that fellow Harnage and the preacher talking to him around here.

Cross-examination.

By Mr. Veasey:

Q. Did you see Wallace Thursday around here that week that some of the other crowd wasn't trying to get with Wallace Thursday?

A. I didn't pay particular attention; only noticed Harnage talking to him several times.

Q. You said Harnage said the land was — between twenty-five and thirty-five thousand dollars?

A. He said that was the wealthiest darkey in the country.

Q. Didn't hear any talk of the crowd trying to buy it for \$2700.00.

A. No sir.

By Mr. Veasey: I move that we strike out the testimony of
249 this witness because the testimony is irrelevant and immaterial.

By the Commission: Noted.

(Witness dismissed.)

No further testimony was offered in this case.

I, Giles A. Penick, being sworn, state that as stenographer to the Commission to the Five Civilized Tribes, I recorded testimony as indicated in the above entitled and numbered cause, and that the foregoing is a true and complete transcript of my stenographic notes therein.

(Sgd.)

GILES A. PENICK.

Subscribed and sworn to before me this 30 day of December, 1904.

(Sgd.)

J. L. DE GROOT,

Notary Public.

CONTESTANT'S EXHIBIT "A."

Bill of Sale.

Know all men by these presents:

That in consideration of the sum of Twenty seven Hundred dollars to me in hand paid, the receipt whereof I hereby acknowledge,

I, Wallace Thursday, by these presents do give, grant, bargain, sell and convey and deliver to Ellen E. Heady, a citizen of the Cherokee Nation, her heirs and assigns all of my right, title, interest, right of possession and possession to the following tract and parcel of land lying and being in the Cherokee Nation Northern District, Indian Territory, the same being bounded and described as follows, to-wit: The eighty (80) lying immediately south and adjacent to the land and improvements of one Fred McDaniel, and lying immediately north of the farm of the grantor herein, and on the east by the land of Wallace Buford and on the west by H. D. Lannom's land or allotment, the same being SE4 of NW4 of Sec. 13 and SW4 of NE4 of Sec. 13 Township 26, Range 12 East, together with all of the appurtenances and improvements located thereon, consisting of fences, one log house with two sheds attached to same, one barn, corrals, cribs, granaries, etc., the same land having a seven wire fence on the north.

To have and to hold the same together with all of the appurtenances thereunto belonging unto the said Ellen E.

Heady, her heirs, executors, administrators and assigns forever, and I the said grantor do hereby covenant and agree with the said Ellen E. Heady, her heirs and assigns that I am the lawful owner of the above described goods and chattels; that I have a good right to sell the same; that there are no lien, or encumbrances against the same and that I will warrant and defend the same until the said Ellen E. Heady, her heirs and assigns, forever.

In testimony whereof I have hereunto set my hand and seal this the first day of April, A. D. 1904.

(Signed) ^{his} WALLACE X THURSDAY, *Grantor.*
mark

Witness to mark:

J. H. HEADY.
J. L. MONROE.

NORTHERN DISTRICT,
Indian Territory, ss:

Be it remembered that on this day come before me Charley C. Julian, a Notary Public within and for the Northern District of the Indian Territory, Wallace Thursday, to me personally well known as the grantor in the above and foregoing Bill of Sale, and who acknowledged to me in person that he signed and sealed the above and foregoing instrument for the purposes and considerations therein mentioned and set forth as his free and voluntary act and deed and I do as such Notary Public so certify.

(Signed) CHARLEY C. JULIAN,
[SEAL] *Notary Public.*

My Com. Ex. Dec. 8th, 1906.

I further certify that all interlineations, erasures, interlining, changes, additions and alterations in above instrument, including

the words "position" "smokehouse" were made by me and in my presence at and before the time of signing and sealing the above presents and that the grantor Wallace Thursday knew of such changes, etc., and agreed to the same.

In witness whereof I have hereunto set my hand the 1st day of April, 1904.

(Signed)

[SEAL.]

CHARLEY C. JULIAN,
Notary Public.

My Com. Ex. Dec. 8th, 1906.

Indorsed as follows: Bill of Sale. Wallace Thursday to Ellen E. Heady.

CONTESTANT'S EXHIBIT "B."

Transferable Only With Consent of the Secretary of the Interior.

Oil and Gas Mining Lease.

Upon Land Selected for Allotment, Cherokee Nation, Indian Territory.

(Sec. 72, Act of July 1, 1902, 32 Stat., 716, 726.)

This indenture of lease, made and entered into, in quadruplicate, on this 16th day of May, A. D. 1904 by and between Wallace Thursday, Guardian of the person and estate of Sam Bobs, a Male Minor of the age of 19 years 2 months 12 days of Bartlesville, Indian Territory, party of the first part, and the Delakee Gas and Oil Company a Corporation duly organized and existing under the laws of the Territory of Arizona and duly authorized to carry on business in the Indian Territory, by compliance with the Act of Congress approved February 8, 1901 (31 Statute 794) of Arkansas City, Arkansas party of the second part, under and in pursuance of the provisions of section 72 of the act of Congress approved July 1, 1902 and the regulations prescribed by the Secretary of the Interior thereunder,

Witnesseth; That the party of the first part, for and in consideration of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the party of the second part, its successors, and assigns, does hereby demise, grant, and let unto the party of the second part its successors and assigns, for the term of one year, 9 months and 18 days, said lease terminating on the 3rd day of March 1906 from the date hereof, all of the oil deposits and natural gas in or under the following described tract of land lying and being within the Cherokee Indian Nation and within the Indian Territory, to-wit: The N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ and the N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of section 13, Township 26 North range 12 east of the Indian Meridian, and containing eighty acres, more or less, with the right

to prospect for, extract, pipe, store, refine and remove such oil and natural gas, and to occupy and use so much only of the surface of said land as may be reasonably necessary to carry on the work of prospecting for, extracting, piping, storing, refining, and
252 removing such oil and natural gas as fuel so far as it is necessary to the prosecution of said operations.

In consideration of which the party of the second part hereby agrees and binds itself its successors and assigns, to pay or to cause to be paid to the lessor as royalty, the sum of ten per cent, of the value, on the leased premises, of all crude oil extracted from the said land, and if the parties do not before the tenth day of the month succeeding its extraction, agree upon the value of the crude oil on the leased premises, the value thereof shall finally be determined under the direction of the Secretary of the Interior in such manner as he shall prescribe, and to so pay the royalty accruing for any month on or before the twenty-fifth day of the month succeeding, and where the value of the crude oil fluctuates, the average value during the month shall constitute the criterion in computing the royalty; and to pay in yearly payments, at the end of each year, such royalty on each gas producing well as the Secretary of the Interior may prescribe, the lessor to have free the use of the gas for lighting and warming his residence on the premises. But failure on the part of the lessee to use a gas-producing well, where the same cannot be reasonably utilized at the rate so prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil.

And the party of the second part further agrees and binds itself, its successors and assigns, to pay or cause to be paid to the lessor as advanced annual royalty on this lease, the sums of money as follows, to-wit: Fifteen cents per acre per annum, in advance, for the first and second years; thirty cents per acre per annum, in advance, for the third and fourth years; seventy-five cents per acre per annum, in advance, for the fifth and each succeeding year

thereafter of the term for which this lease is to run; it being
253 understood and agreed that said sums of money so paid shall be a credit on the stipulated royalties should the same exceed such sums paid as advanced royalty and further, that should the party of the second part neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable, then this lease shall, at the option of the lessor, be null and void, and all royalties paid in advance shall become the money and property of the lessor.

The party of the second part further covenants and agrees to exercise diligence in the sinking of wells for oil and natural gas on the lands covered by this lease, and to operate the same in a workmanlike manner to the fullest possible extent, unavoidable casualties excepted; to commit no waste upon the said land, and to suffer no waste to be committed upon the portion in its occupancy or use; to take good care of the same, and to promptly surrender and return the premises upon the termination of this lease to the party of the first part or to whomsoever shall be lawfully entitled thereto, and not to remove therefrom any buildings or improvements erected thereon

during the said term by the said party of the second part, but said buildings or improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease in addition to the other considerations herein specified, excepting that tools, boilers, boiler-houses, pipe-lines, pumping and drilling outfits, tanks, engines and machinery and the casing of all dry or exhausted wells, shall remain the property of said party of the second part, and may be removed at any time before the expiration of sixty days from the termination of the lease; and it will not permit any nuisance to be maintained on the premises under its control, nor allow any intoxicating liquors to be
 254 sold or given away for any purposes on such premises; that it will not use such premises for any other purpose than that authorized in this lease, and that before abandoning any well it will securely plug the same so as to effectually shut off all water above the oil-bearing horizon.

And it is mutually understood and agreed that no sub-lease assignment or transfer of this lease or of any interest therein or thereunder can be directly or indirectly made without the written consent of the lessor and the Secretary of the Interior first obtained, and that any such assignment or transfer made or attempted without such consent shall be void.

And that the said party of the second part further covenants and agrees that it will keep an accurate account of all oil mining operations showing the whole amount of oil mined or removed and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and other personal chattels used in said prospecting and mining operations, and upon all of the oil obtained from the land herein leased, as security for the payment of said royalties.

And the party of the second part agrees that this indenture of lease shall in all respects be subject to the rules and regulations heretofore or that may hereafter be lawfully prescribed by the Secretary of the Interior relative to oil and gas leases in the Cherokee Nation.

And the said party of the second part expressly agrees that should it or its sub-lessees, heirs, executors, administrators, successors, or assigns, violate any of the covenants, stipulations or provisions of this lease, or fail for the period of sixty days to pay the stipulated monthly royalties provided for herein, then the party of the first part shall be at liberty in his discretion to avoid this indenture of lease and cause the same to be annulled, when all the right,
 255 franchises and privileges of the party of the second part its sub-lessees, heirs, executors, administrators, successors or assigns hereunder shall cease and end without further proceedings.

If the lessee make reasonable and bona fide effort to find and procure oil in paying quantity as is herein required of it and such effort is unsuccessful it may at any time thereafter, with the approval of the Secretary of the Interior, surrender and wholly terminate this lease upon the full payment and performance of all its then existing obligations thereunder: Provided, however, that approval

of such surrender by the Secretary will be required only during the time his approval of the alienation of the land is required by law.

It is further agreed and understood that this lease shall be of no force or effect unless the party of the second part shall, within sixty days from date of approval of the application filed in connection herewith, furnish satisfactory bond in accordance with the regulations of May 4, 1903, prescribed by the Secretary of the Interior, which shall be deposited and remain on file in the Indian Office during the life of this lease.

In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

(Signed)

his
WALLACE x THURSDAY,
mark
Guardian of the Person and Estate of
Sam Bobs, a Minor.

Two witnesses to execution by lessor:

DAVID L. OWSLEY,
P. O., Bartlesville, Ind. Ter.
JOHN P. JACKSON,
P. O., Bartlesville, I. T.

Two witnesses to execution by lessee:

P. O., ———
P. O., ———

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Affidavit of Witnesses.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

David L. Owsley of Bartlesville I. T. and John P. Jackson of Bartlesville I. T. witnesses to the attached lease executed by Wallace Thursday Guardian of the person and estate of Sam Bobs, a minor to the Delakee Oil and Gas Company being by me first duly sworn, upon their oaths state, each for himself: That said oil and gas mining lease was in their presence read and fully explained to the lessor, and that he understood the nature, contents, and effect thereof, and approved of the same.

(Signed)
[SEAL.]

DAVID L. OWSLEY.
JOHN P. JACKSON.

Subscribed in my presence and sworn to before me this 16 day of May 1904.

(Signed)

JAMES A. VEASEY,
Notary Public.

My commission expires Nov. 7, 1907.

Certificate of Officer Taking Acknowledgment.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

I, James A. Veasey a Notary Public within and for the Northern District of the Indian Territory, do hereby certify that David L. Owsley of Bartlesville I. T. and John P. Jackson of Bartlesville I. T. witnesses to the attached oil and gas mining lease, executed by Wallace Thursday, guardian of the person and estate of Sam Bobs a minor, to Delakee Oil and Gas Company signed the same in my presence at the request of the lessor; that they are personally well known to me; that I know of my own knowledge that they are reputable persons and entitled to full faith and credit.

Witness my hand and seal as such Notary Public on this 16 day of May 1904.

(Signed)

JAMES A. VEASEY,
Notary Public.

257 My commission expires Nov. 7, 1907.

UNITED STATES OF AMERICA,
Indian Territory, Northern Judicial District, ss:

Be it remembered, that on this day came before me, the undersigned, a Notary Public within and for the Northern Judicial District of the Indian Territory aforesaid, duly commissioned and acting as such Wallace Thursday, Guardian of the person and estate of Sam Bobs, a minor to me personally well known as the party lessor in the within and foregoing indenture of oil and gas mining lease, and stated that he had executed the same for the consideration and purposes herein mentioned and set forth, and I do so hereby certify.

Witness my hand and seal as such Notary Public on this 16 day of May 1904.

(Signed)

JAMES A. VEASEY,
Notary Public.

[SEAL.]

My commission expires Nov. 7, 1907.

UNITED STATES OF AMERICA,
Northern District, Indian Territory:

I, Chas. A. Davidson, Clerk of the United States Court for the Northern District of the Indian Territory, do hereby certify the within and foregoing to be a true and correct copy of a paper filed May 16th 1904 in the matter of the guardianship of Sam Bobs a minor, as the same appears from the original on file in my office at Nowata, I. T.

Witness my hand and the seal of said Court at Nowata, this 7th day of October, A. D. 1904.

CHAS. A. DAVIDSON, *Clerk,*
 By J. W. MOREHOUSE, *Deputy.*

Department of the Interior.

Washington, D. C.

Oil and Gas Mining Lease.

Cherokee Nation, Indian Territory.

258 To ———, of ———, Sec. —, Tp. —, Range—, in the
Cherokee Nation, Indian Territory.

Dated ———, 190-.

Expires ———, 190-.

Department of the Interior.

U. S. Indian Service.

Union Agency.

MUSKOGEE, I. T., ———, 190-.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be——

See my report of even date,

—————,
U. S. Indian Agent.

Department of the Interior.

Office of Indian Affairs.

WASHINGTON, D. C., ———, 190-.

Respectfully submitted to the Secretary of the Interior with the recommendation that it be —.

—————,
Commissioner.

Department of the Interior.

WASHINGTON, D. C. ———, 190-.

—————,
Secretary of the Interior.

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EX. I.

Department of the Interior.

Commissioner to the Five Civilized Tribes.

Cherokee Allotment Contest No. 830.

MUSKOGEE, INDIAN TERRITORY, April 13, 1906.

ELLA E. HEADY, by JOSHUA B. HEADY, Her Husband, Contestant,

VS.

SAMUEL BOB, a Minor, Contestee.

Land in Controversy: S.E./4 of N.W./4 (less 3.08 acres for K. O. C. & S. R. R. right of way); and the S.W./4 of N.E./4 of Section 13, Township 26, North, Range 12, East of the Indian Meridian.

Appearances:

For contestant: J. H. Huckleberry and W. W. Hastings, Attorneys.

For Contestee: In person and by Veasey and Rowland, and A. A. Davidson, Attorney.

Testimony taken pursuant to decision of the Department of Date October 21, 1905, to determine an equitable division of the land in controversy.

Testimony on Behalf of Contestant.

Direct examination:

JAMES E. HICKEY, being duly sworn, testified as follows:

By Mr. Hastings:

Q. What is your name?

A. James E. Hickey.

Q. Your age?

A. 36.

Q. Post office address?

A. Bartlesville.

Q. What is your occupation?

A. Civil Engineer and Surveyor.

Q. How long have you been engaged in surveying.

A. About 17 years.

Q. You are at present engaged in surveying?

A. Yes, sir.

Q. I will ask you if you know the land in controversy in this case, which is described as the S.E./4 of the N.W./4 (less 3.08 acres for K. O. C. & S. R. R. right of way); and the S.W./4 of the N.E./4 of Sec. 13, T. 26 N. R. 12 E.?

A. Yes, sir.

260 Q. How long have you known that tract of land?

A. About a year.

Q. Within that time have you been asked to go upon it and make a survey of the improvements upon it, and upon adjacent lands?

A. Yes sir, I have.

Q. Did you do that?

A. I did.

Q. Who were with you when the survey was made?

A. Mr. Moran, and I can't tell the names of the others. There were two more—they were Indians.

Q. Did you make a survey of those improvements?

A. Yes sir.

Q. Did you make a plat of them?

A. Yes sir.

Q. Is this the plat which I have that you made of the improvements upon that and adjoining lands?

A. Yes sir.

(Hastings: We desire to offer in evidence the plat made by the witness, of the improvements upon the land in controversy, referred to by the witness in his testimony.)

(Veasey: We have no objections.)

(Commissioner: The plat referred to and offered will be received in evidence, and marked, for identification, Contestant's Exhibit "A.")

Q. I see that you have marked a little bit west of the east line of the east 40 in controversy "a wire fence"?

A. Yes sir.

Q. Which forms the eastern boundary of what is described upon the plat as an orchard. Is that wire fence still there?

A. It is.

Q. Now, west of the orchard, and running north and south some few yards, there is also marked upon the plat "wire fence." Is that wire fence still there?

A. Yes sir.

Q. Do you remember whether or not the land in controversy between the two fences which I have mentioned, which includes the orchard and that south of the orchard, and which is marked upon the plat "22.17 acres," being upon the east 40 of the eighty acres in controversy, is in cultivation?

A. I think it is.

Q. Is there any of that in cultivation upon this east 40 of the land in contest other than that that I have indicated in the question just asked?

A. I don't think there is. I want to say that I am not sure whether the ground just east of the orchard, between that and the quarter line, is in cultivation.

Q. Are you sure as to that west of the wire fence that runs north and south and west of the orchard?

A. Yes sir there is no cultivated land west of there.

Q. I see you have marked west of this wire fence which is west of the orchard, upon the east 40 in controversy, a line—a line, marked "road." Is there a road running through there?

A. Yes sir.

Q. Is it yet a traveled road?

A. Yes sir.

Q. Down to the southeast corner of the east 40 in controversy I see you have a line marked there "old fence line." Is there a fence there now?

A. No sir. There is, I believe, a post or two sticking up, but no wire.

261 Q. Is there anything to indicate upon the ground that there has been an old fence there?

A. Yes sir, a few posts, and the old grass grown up around them.

Q. Is there a wire fence along the south of the land in controversy?

A. Yes sir.

Q. Do you remember the condition of that fence—as to age—as to whether it is an old fence or a recently built one, do you remember?

A. It is not a recently built fence. It has been there some time.

Q. Now within this enclosure that I have been inquiring about, upon the east forty, you have indicated upon your plat that there are "22.17 acres."

A. Yes sir.

Q. Was that the amount enclosed within this enclosure upon the east 40?

A. Yes sir.

Q. I see from the plat that you have indicated that the old improvement, about which we have been talking, extended further north upon the 40 just north of the east 40 in controversy, and you have so indicated upon this plat?

A. Yes sir.

Q. I see you have indicated an extension of the wire fence which forms the east boundary of the orchard on the north as the "ridge line"?

A. Yes sir.

Q. Why do you use the word "Ridge line"? What is it intended to indicate?

A. It indicates between what was broken ground and what was not broken. The plowed ground is about six inches higher than the ground that was not broken.

Q. Is there any indication of there having been a fence along that ridge line?

A. Yes sir.

Q. And is that true of all the ridge lines running around the 40 north of the east 40 in controversy?

A. Yes sir.

Q. You have marked it on the north, east and west?

A. That is right.

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Q. What is the area of the land upon the 40 north of the east 40 in controversy inclosed within those ridge lines?

A. There is 11.96 acres.

Q. Is the rest of the land, outside of the ridge lines, prairie or meadow?

A. It is townsite now. It is prairie.

Q. I see you have extended your survey south of the land in controversy. I ask particularly of the 40 south of the east 40 in controversy. Did you survey that?

A. Yes sir.

Q. And is the plat which you have testified of, which has been introduced here, a correct plat of the improvements on that land?

A. Yes sir.

Q. I see you indicate upon the plat, upon the 40 south of the east 40 in controversy, "48.67 acres"?

A. Yes sir.

Q. What is that intended to represent?

A. That is intended to represent from the half section line to the extreme east end that was enclosed.

Q. I see that east of what is marked "highway" upon this plat, which the plat shows to be enclosed on either side some little distance, you have marked "old fence line"?

A. Yes sir.

Q. Is that old fence line there—or is there any old fence there now?

A. There is still a post or two up, and the old fence line is very well in evidence yet.

Q. Near the west side of the 40 south of the east 40 in controversy, and west of the ravine, which you have marked "draw" upon the plat, I see you have "east line of Johnson & Keeler tract." Is there any evidence of any old fence row along there?

A. Yes sir, there is.

Q. Is there a road near this line which I have indicated in my last question?

A. Yes sir.

Q. As shown upon this plat?

A. Yes sir.

Q. And that road is traversed now?

A. Yes sir.

Q. Now, south of the west 40 in controversy you have marked "Johnson & Keeler tract," and the plat shows the figures "39.96" acres. What is that intended to represent?

A. That is intended to represent the ridge line and cultivated land up to the half section line.

Q. That is, up to the land in controversy?

A. Yes, up to the half section line.

Q. You have indicated upon this plat, upon this same 40 about which I have been speaking, just below the words "Johnson & Keeler tract," "entire tract 46.48 acres"?

A. That includes the land up to the east line of the Johnson and Keeler tract which extends east to the half section line.

Q. Along the south side of the 80 in controversy you have marked "ridge line."

A. Yes sir.

Q. What is that intended to represent upon the plat?

A. The same as in the upper part—where the plowed land is higher than the unbroken land.

Q. Does it show very plainly?

A. Yes it is quite high on the south.

Q. Is it higher on the south than on the north?

A. Yes sir the south ridge lines are higher than the north ridge lines are.

Q. Do you mean the south?

A. Yes sir.

Q. Who did you say was with you at the time this survey on and of this land was made, and the fence lines pointed out to you?

A. Mr. Moran and a couple of Indians.

Q. Are they witnesses here?

A. Yes sir.

Cross-examination.

By Mr. Veasey:

Q. You said upon your direct examination that you had known this land just about a year?

A. Yes sir.

Q. You know nothing about the improvements that were there in April 1904?

A. No sir.

Q. Do you know anything about the improvements that were there in 1893?

A. No sir.

Q. Does this plat correctly indicate all of the old fences and ridge lines, which indicate old fences, about the three 80 acre tracts that are indicated on this plat?

A. All of them, do you say?

Q. Yes.

A. I wouldn't know about this northwest 40, up near town. It doesn't show the fences in the addition.

Q. Nor does it show the ridge lines in the addition?

A. Yes it does.

Q. When you refer to the addition you refer to the Fred McDaniel 80 just north of the 80 in controversy?

A. Yes sir.

Q. In making your survey of the east 40 tract north of the land in controversy did you strike a large fence post that indicated a corner, just about this place (indicating the northeast corner)?

A. I did not.

Q. Did you traverse the east 40 of the McDaniel tract for the express purpose of finding any ridge lines on that 40?

A. Yes sir.

Q. When was this survey made?

A. The first was made December 27 and 28, 1905.

Q. In making the survey did you go to the northwest corner of the west 40 of the McDaniel tract?

A. I did not.

Q. You have indicated on your plat, and on the east forty of the McDaniel tract, a ridge line running in a northwesterly and southeasterly direction?

A. Yes sir.

Q. Did you follow that ridge line past the road that you have indicated on the plat?

A. I did not.

Q. As a matter of fact, Mr. Hickey, when you reached the road indicated on your plat, couldn't you see the ridge line running off in a northwesterly direction almost to the corner—the northwest corner of the McDaniel 40?

A. I could not.

Q. Will you say that there was no ridge line on the west 40 acres of the McDaniel tract, which was a continuance of the ridge line indicated on your plat, running in a northwesterly and southeasterly direction on the east 40?

A. No that ridge may be there. If it is I didn't find it—that's all.

Q. Did you traverse the west line of the three 80 acre tracts that are indicated on this plat?

A. I run—I didn't traverse, but I run a quarter of a mile of that west line.

Q. You didn't go down to the southwest corner of the three 80's.

A. I had to traverse the other 40's.

Q. In your survey were you about the southwest corner of the three 80 acre tracts?

A. Yes sir.

Q. You found a fence post there?

A. Yes sir.

Q. And a ridge line leading east to the old fence line you have indicated on your plat?

A. Yes sir.

Q. On the southwest 40 acre tract of the land indicated on your plat, I observe that you state there was a wire fence there?

A. Yes sir, there is a wire fence.

Q. From the point that this fence, the one I have just described, stops at the north, did you continue to look northward due north in search of an old fence line?

A. No sir.

Q. You couldn't see whether there was an old fence line, which was a continuation of the fence indicated in the southwest
264 part of the plat or not?

A. No sir.

Q. Is it not true, Mr. Hickey, that the ridge line indicated by you on the south of the southwest 40 of the plat, and the wire fence on the southeast 40 of the plat taken together, complete a boundary of the south 80 south of the land in controversy?

A. Yes sir.

Q. Is it not true that the wire fence indicated by you on the southeast part of the plat, taken together with ridges and other indications of an old fence, forms practically the east boundary of the two south eighties and a portion of the boundary for the north 80 indicated on this plat?

A. Yes sir.

Q. Is it not likewise true—Mr. Hickey, how did you determine the exact location of the orchard indicated on this plat?

A. From the quarter stone between 13 and the section above.

Q. Did you determine the south line of the north 80?

A. Yes sir.

Q. In making that determination did you say that the orchard was immediately south of that?

A. It is south of the quarter line, yes sir.

Q. Does it join up to the quarter line?

A. It joins up to the quarter line. The orchard itself does not. There is a lane there that cuts the orchard off from the quarter line.

Witness excused.

Direct examination:

CHARLES McLAIN, being duly sworn, testified as follows:

By Mr. Hastings:

Q. What is your name?

A. Charles McLain.

Q. Your age?

A. 31.

Q. Your post office address?

A. Bartlesville.

Q. How long have you lived in the vicinity of Bartlesville?

A. About 28 years.

Q. Do you know this 80 acres of land, south of the McDaniel tract, that is in controversy between Heady and Bob.

A. Yes sir.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. Do you know Sam Bob?

A. Yes sir.

Q. How long did you say that you — known the tract of land in controversy?

A. I have known it ever since I can remember, pretty near. Have lived around it.

Q. Is there an orchard on any part of it or was there?

A. Yes sir there is now and has been for 12 or 15 years.

Q. About when did you first become acquainted with this orchard?

A. It has been about—say 12 years, anyhow.

Q. Well 12 years ago when you became acquainted with
265 it, I will ask you what was the condition of the land that
lies west of this orchard and west of what is shown upon a

plat, made by a surveyor, and marked Contestant's exhibit "A," which is now nearer the west line of the east 40 in controversy—I will ask you when you first knew it 12 years ago, what was the condition of that land west?

A. All prairie.

Q. Was it enclosed?

A. I think not.

Q. About how long was it enclosed after that?

A. I couldn't say, exactly, but it was inclosed a short time after that with a three wire fence—a couple or three years after.

Q. Who enclosed it?

A. Wallace Thursday.

Q. Did he do the work upon it personally?

A. I couldn't say whether he did or not.

Q. Did you ever live upon this Thursday place?

A. Yes I have.

Q. When did you live upon it?

A. I lived there two years ago.

Q. Did you ever live upon it prior to that time?

A. No sir, I never did.

Q. Where did you live—say 12 years ago?

A. I lived three miles south of Bartlesville.

Q. Did you have occasion to go by this place to go to Bartlesville?

A. Yes sir, the old road run right through it.

Q. Do you mean by pointing with your finger the road that is marked here on the land?

A. Yes sir.

Q. I will ask you if at that time if that west of the road of the land in controversy was enclosed?

A. The west 40 acres in controversy was not, and the 40 immediately south was broke out.

Q. But this north of it was not?

A. No sir.

Q. You say it was not enclosed?

A. No sir it wasn't. To the best of my knowledge it was not enclosed until two or three years afterwards.

Q. And this is the road you traveled going to your trading point?

A. Yes sir.

Cross-examination.

By Mr. Veasey:

Q. Do you know about when the old cabin was built on the land in controversy?

A. Well, something near 12 or 14 years ago—I can't remember exactly.

Q. Where did you live at that time?

A. About a half mile west of Silver Lake.

Q. How far is that from the land in controversy?

A. About three or three and a half miles.

Q. How was your attention called to the building of that cabin on the land in controversy?

A. I was going to town and saw a new improvement going up there, and inquired who was putting it up, and found that Jacob Wheeler was putting it up.

Q. That was 12 or 14 years ago?

A. Something like that—it may have been longer—I think it was.

266 Q. How long after the cabin was built was it before the fence was built? The one you described around the west 40 of the land in controversy, being prairie land?

A. It wasn't but a few years. When Wallace bought it he enclosed it with a three wire fence, but I couldn't say just how long it was.

Q. Your testimony upon this point is that Wallace Thursday two or three years after he bought the land in controversy from Wheeler, built a fence on the west part of it enclosing a pasture of the prairie land which you described in your testimony?

A. Yes sir.

Q. You are positive upon that point?

A. I know Wallace fenced it but I am not sure of the year.

Q. Will you state that this particular prairie land was not fenced on the west and on the north before Wallace Thursday bought it? I am not asking you for your opinion but as a matter of fact.

A. To the best of my knowledge it was not.

Q. Can't you be more definite as to the time when this fence was built on the west enclosing this pasture land?

A. The fence has been removed—it was built—I can't say just exactly the year that Wallace Thursday fenced it, but then later on he moved the fence further over.

Q. But you can't say just when it was?

A. Not the year.

Q. Have you been over this land recently?

A. No, just passing along the road on the east side of it.

Q. You didn't go over the land with the surveyors?

A. No I didn't. I looked over it from the northeast corner of the land in controversy.

Q. Do you know old man Gibbs?

A. Yes sir.

Q. Don't you know as a matter of fact that he plowed out a fence row for the old Johnstone place?

A. I think he did.

Q. Is it not a matter of fact that the old Johnstone improvements were made before the Wheeler improvements, east of it?

A. I don't think it was.

Q. You think the Johnstone improvements were made afterwards?

A. I think so.

Q. What is your recollection as to the course these improvements took from the time that they were first made—through whose hands did they pass—who made the places—do you know? Who made them first and who did they transfer them to, and when?

A. The east 40 acres in contest was transferred from Wheeler to Johnstone and from Johnstone to Thursday, and the southwest 40 represented on Contestant's exhibit "A" was sold by Johnstone & Keeler to Wallace Thursday.

Q. Then I understand your testimony to be that Jacob Wheeler never owned the southwest 40 indicated on this plat?

A. Not as I know of *the* the best of my knowledge.

Q. To refresh your memory is it not true that William Johnstone had old man Gibbs make a place west of the cabin of Jacob Wheeler's.

A. This cabin in the northeast corner of the east 40? It is a quarter south if it is (indicating the southwest 40 represented on Contestant's exhibit "A").

Q. Is it not true that after Johnstone had made these improvements he sold it to Wheeler, who, in the mean time, had built the cabin?

A. Not that I know of.

Q. That is not your impression?

A. No sir.

267 Q. Your impression of the whole business is that the cabin was built by Wheeler and sold to Johnstone & Keeler, and the place which they had made to the south was sold to Wallace Thursday?

A. Yes sir.

Witness excused.

JASPER EXENDINE, being duly sworn, testified as follows:

Direct examination.

By Mr. Hastings:

Q. What is your name?

A. Jasper Exendine.

Q. How old are you?

A. I am 52.

Q. What is your post office?

A. Exendine.

Q. Did you ever live in the vicinity of Bartlesville?

A. Yes sir I used to live at Bartlesville.

Q. How long has it been since you moved away from there?

A. 10 years.

Q. Has this land in controversy between Heady and Bob been pointed out to you?

A. Yes sir.

Q. You know, then, the land in controversy?

A. Yes sir.

Q. Have you been upon this land recently?

A. Yes sir.

Q. Is there an orchard upon part of it?

A. Yes sir.

Q. Did you own any improvements near this land in controversy at any time?

A. Yes sir.

Q. About how long ago?

A. I owned it about 9 years ago.

Q. What direction from this orchard—say as shown upon the plat—did you own improvements?

A. West.

Q. And you sold these about 9 years ago?

A. Yes sir.

Q. How long had you owned these improvements before you sold them?

A. I built part of them—part of the improvements—part of the farm—perhaps 30 years.

Q. Did you use to live on these improvements over there?

A. Yes sir.

Q. Did you know of the circumstance of Wallace Thursday purchasing the improvements, part of which is in controversy?

A. I heard of it, but I couldn't say that I knew of it—I just heard it.

Q. Now, at that time where were you living—when you heard of this?

A. Right there (pointing on the plat).

Q. On your place west?

A. I believe that was the place.

Q. Mr. Exendine, what was the character of this land with reference to improvements which is west of the wire fence marked on Contestant's exhibit "A," which is a little bit west of the orchard, as shown upon this plat—I say, what was the character of the land out west of there between there and your place—when Wallace Thursday bought it?

268 A. I don't remember just the time. I heard he bought it, but I don't know the time, but when that house was built, and that orchard planted, it was all open.

Q. Who fenced it up?

A. Wallace Thursday I think.

Q. After he got it?

A. Yes sir.

Q. Whose fence formed the west boundary over there?

A. Of that piece of land?

Q. Yes.

A. Wallace Thursday.

Q. I mean when the fence was extended out west—you said the fence was extended out west?

A. Let me understand you.

Q. Did you have any improvements west?

A. Yes—oh! yes, I lived west of there.

Q. Was Thursday's fence joined to yours?

A. No, it wasn't joined.

Q. Did it ever join?

A. Not that I know of.

Q. He never joined his fence to you?

A. Up here on the north line there was a gap of about 50 or 60 yards, and I put a little fence in there to keep my horses (referring to the north 40 of section 16)—No, it was right here I put the little fence to keep my horses.

Q. Just west of this line marked "wire fence" whose land was that in there at the time you heard Thursday had bought this?

A. Well, my best understanding is that Billy Johnstone had a claim in there, and he went to work and done some work there, but I didn't pay much attention to it. Some time I saw one at work and sometime another, and I never paid much attention to it.

Q. Did Thursday get your permission to fence there?

A. Yes, I give him my permission.

Q. Whose land was it then when you gave him permission—whose quarter was it?

A. You see our old rules were that the oldest improvements held a quarter. Mine were the oldest and if I was to kick nobody could come in there.

Q. Did you hold the quarter over there?

A. Yes sir.

Q. Did he fence it?

A. Yes sir.

Q. Was that west of this orchard?

A. Yes sir.

Q. West of this line marked "wire fence" running a little west of the land on which this orchard is—being the west 40 in controversy, and the west part of the east 40?

A. Yes sir.

Q. About how long after Thursday bought this original place until he fenced that west 40?

A. I can't tell you, I don't remember, but I think he fenced it some time—about a year after—but I don't know. I didn't pay no attention to it. I didn't stay there all the time. I was traveling a good part of the time.

Cross-examination.

By Mr. Veasey:

Q. Where were you living in 1893?

A. I was living right west of Bartlesville in 1893, about a mile north of the land in controversy.

269 Q. Do you know where Fred McDaniels' 80 is, just south of Bartlesville?

A. Not exactly. I am not acquainted with Fred McDaniels.

Q. Your attention has been called to the land in controversy?

A. Yes sir.

Q. You have been over the land in the last day or two with a surveyor?

A. Not with a surveyor.

Q. Who took you over the land?

A. Mr. Heady.

Q. You are familiar with the land in controversy?

A. Yes sir.

Q. When did you live immediately west of that 80 acre tract?

A. I lived there in '90 and '91. I believe that was when it was.

Q. Was it just about 1890 that you made your improvements west of this 80?

A. No, I made my improvements west of that 80 about 18 or 19 years ago.

Q. When you made your improvements had this cabin on the land in controversy been built—that Jacob Wheeler cabin?

A. No it had not been built.

Q. Had Mr. Johnstone made any improvements east of your place when you made your improvements?

A. No I think not. He had not made them yet.

Q. You know old man Gibbs?

A. Yes sir.

Q. Don't you know, as a matter of fact, that he plowed out the fence line for the place that Johnstone made, east of your old place?

A. I don't know it. I heard that somebody did, but I don't know whether it was him or not.

Q. Don't you know that Johnstone did have fence lines for an improvement plowed out east of your old improvements.

A. I think he did. I don't know but what he did. I know that every now and then there would be some work done there, but I didn't pay much attention to who done it.

Q. Were you familiar with this land in controversy about the year '91.

A. Yes sir, I think I was.

Q. Will you say positively that in 1891 or thereabouts there was no fence on the west end of the 80 that is in controversy, enclosing some pasture or mow land to the east of that line. Would you say that positively?

A. No, I can't say that positively, but my best recollection is that it was about that time that it was put in cultivation there and the fence built. I don't know and it don't strike my mind right to know just how much was done, and I can't be positive just how it was nor the time it was done, but it was some time near '90 or '91.

Q. Is it not also true that when Wallace Thursday built the fence that you have described in your testimony, he simply moved out a fence to the west that was already there.

A. I can't so understand it.

Q. You said in your testimony that Wallace Thursday built a fence west of the pasture land?

A. Yes sir. Well, I say that, I think Wallace Thursday built it or had it done.

Q. You think that was about 1891?

A. I think it was built about—no, it was after that.

Q. You are positive that Wallace Thursday built that fence?

A. I feel positive that he built it.

Q. In building that wasn't he just extending the fence west from

where the fence had been a year or so before then? Are
270 you positive upon that point?

A. No I don't remember. This fence there come out here even with my house, and then there was a little patch that come out just east of my house, across the branch, and there was a little patch near there, and then all of this was enclosed around here.

Q. Do you know who made that enclosure?

A. No I do not.

Redirect.

By Mr. Hastings:

Q. That that you spoke of there was enclosed, and east of your house was in cultivation, wasn't it.

A. Yes sir, it was plowed out.

Q. But the meadow land east of you and west of this orchard was fenced by Thursday after he bought it?

A. That is what was told me—that the work was done by him. I saw the people make it, but I didn't know who done the work.

Witness excused.

Mr. Veasey: At this stage can you indicate in the record what you understand an equitable division of the land to be, from the evidence—what is your claim as to an equitable division?

Mr. Hastings: When we get ready to brief this case and after all the testimony is in, then we will not hesitate to state all of our contentions in the case.

Contestant rests.

Testimony on Behalf of Contestee.

EDWARD C. DE YARNETT, being duly sworn, testified as follows:

Direct examination.

By Mr. Veasey:

Q. What is your name?

A. Edward C. De Yarnett.

Q. How old are you?

A. 32.

Q. Where do you live?

A. At Bartlesville.

Q. What is your profession?

A. Mining engineer.

Q. Are you also a Civil engineer?

A. Yes sir.

Q. Are you acquainted with the land in controversy, being the S. E./4 of the N. W./4 (less 3.08 acres for K. O. C. & S. R. R. right of way); and S. W./4 of N. E./4 of Section 13, Township 26, North, Range 12 East in the Cherokee Nation?

A. Yes sir.

271 Q. Have you at any time recently surveyed this land and contiguous lands, and made a plat of them?

A. On April 6.

Q. This present April?

A. Yes sir.

Q. I will ask you to examine that plat and state to the Commissioner whether or not this is the plat you made based upon the survey that you made at this time?

A. Yes sir it is.

Q. Is this a true and correct plat of the improvements upon the land at that time?

A. Yes sir it is. There are other improvements such as houses and oil wells and such as that that are not in it.

Mr. Veasey: We offer the plat referred to in evidence.

Commissioner: The plat referred to is received in evidence and marked, for identification, Contestee's Exhibit "1."

Q. Calling your attention to the North 80 indicated on the plat, which is immediately north of the land in controversy, you have indicated on the plat an old fence line, evidenced by a ridge, and shown on the plat by a yellow line. Did that ridge actually exist at the time of the survey?

A. Most of the way—within 100 feet of the northwest corner, it did.

Q. From your experience in matters of this kind what — you say that that ridge indicated.

(Hastings: We object to that.)

(Objection noted.)

Q. What was that?

A. There was a ridge that appeared to be the ground where a fence had once been, it being raised and as was the custom in that country of plowing a ridge for fences, the ridge is still in evidence. And I will say this too—that on the west you can find some of the post holes, and a few posts that are still in evidence on the line. Not posts full height, but broken off stubbs.

Q. Calling your attention to the yellow line indicated on the west of the three 80's that are indicated on the plat—I will ask what that indicates?

A. It is the line where a fence has once been—where the witness stated that the fence had been.

Q. How indicated by physical objects?

A. By a growth of small shrubbery along the line, and a few posts and post holes still in evidence, showing that the fence had not been out of place very long.

Q. Does this yellow line at any place strike a remnant of an old fence?

A. Yes sir—between the branch—after it crosses the branch.

Q. For what distance does that old fence go?

A. 761 feet.

Q. To about what point on the plat and according to the sections lines?

A. Well I will have to figure that out to get the exact distance, but just a short distance from the quarter line.

Q. How far east from the southwest corner of the south 80, as indicated on the plat?

A. It is 264 less 16 feet—that would be 248 feet.

Q. From the point that the yellow line running north and south on the west ends, you have indicated a yellow line running in an easterly direction. What does that represent?

A. It represents a line that witnesses who went with us stated was an old fence line.

Q. Are there any physical indications of its being in existence?

A. The ridge is still there.

Q. Does that ridge join to any fence?

A. 716 feet from its starting point it joins an old fence.

Q. That fence runs east as far as is indicated by the yellow line?

A. Except for a break at the road.

Q. What does the yellow line to the east represent?

A. It represents the line that the witnesses stated was the old fence line making the east boundary.

Q. Are there any physical indications of its being or having been a fence?

A. Yes sir, for 480 feet the fence is on the line, and from there on there is a ridge still in evidence, and post holes.

Q. At the point that the yellow line running north on the east line of this farm meets the yellow line running from the northwest, is there any physical object of any kind there?

A. There is a high post, this fence extends some 700 feet from this corner.

Q. You have indicated a yellow line north of certain cultivated land, on the southwest 40 acres of the plat. What does that represent?

A. That represents a line which they stated was once a fence line.

Q. The ridge was actually there was it?

A. Yes sir, very plainly.

Q. Now you have shown a yellow line running north and south—practically north and south—through the tract indicated by the exterior yellow lines. What does that represent.

A. It represents a line that the witnesses stated was a fence line. There is a fence on the land part of the way.

Q. This house and orchard as indicated on the plat, are actually there?

A. They were at the time the plat was made.

Q. There is an orchard there?

A. Yes sir.

Q. Now in regard to the yellow lines on the north and west—I want you to indicate to the Commissioner exactly what remnants there were of an old fence, or of any physical objects that indicated an old fence, at the time the survey was made?

A. There is a fence 716 feet west of the northeast corner; there is a ridge that can be followed very easily to where the fence incloses the right of way, east of the railroad track; then it is broken, because there is a road that crosses the old road and northwest of this tract the position of the corner was established by the witnesses. There was nothing to indicate that there was a corner there, because in excavating for the railroad they had thrown the dirt in there—there is a considerable cut there—but I believe there were three or four witnesses that this was the point. I located that northwest corner from where they said they thought the corner had existed, and it seemed to be a continuation of the north line and of the west line at the point of intersection.

Q. What were the physical manifestations of a fence on the west?

A. On the west a fence is still there for 761 feet, and from there on you can still find posts lying on the ground, and the post holes at intervals. There is a line of shrubbery which looks very much like it was once a fence line that extended to the north limits of the 80 in contest. From there on it is in what is now a road.

273 The road crosses the track here and is all obliterated.

Q. Upon what basis do you continue the yellow line from the point you have just indicated to the northwest corner of the plat you have made?

A. Because this plat was to illustrate the witnesses' statement that this is the northwest corner, and that this fence continued to this corner.

Q. The witnesses made these statements to you?

A. Yes sir, at that time.

Q. If the line continued as they gave it would it meet that corner?

A. Yes sir.

Q. Who were the witnesses that accompanied you?

A. Mr. Gibbs, Robert Wheeler, Mr. Reed and Wallace Thursday.

Q. Did they follow you around as you made the entire survey?

A. Yes sir.

Q. Did you take field notes as the survey was made?

A. Yes sir, and this plat is the result of those field notes.

Cross-examination.

By Mr. Huckleberry:

Q. Was anyone present at the time of this survey except the witnesses you have named?

A. Yes sir.

Q. Who were they?

A. Mr. James A. Veasey.

Q. Who else?

A. Mr. Leslie Combs.

Q. Who else?

A. A part of the way Mr. Gray was with us.

Q. James Gray?

A. Yes sir.

Q. Who else?

A. Sam Bob, he was there part of the way, but he didn't follow around the lines. And my own chain men—they were with me—do you want their names?

Q. No, who employed you to make this survey?

A. Mr. Combs.

Q. He is a member of the Delokee Oil Company, is he not?

A. I don't know.

Q. The yellow lines upon the plat which you have submitted were prepared from the statements made by those witnesses as to where the old fences were?

A. Yes sir.

Q. Not from your personal knowledge?

A. Except where the fences are on the lines.

Q. Except where it is shown by the broken land that the fences were?

A. That is all.

Q. How long have you been acquainted with this tract of land?

A. I have been acquainted with it since I made the survey.

Q. You had no acquaintance prior to the time the survey was made?

A. No.

Q. Calling your attention to the tract of land in the 40 north of the east 40 of the land in controversy, you have a tract which is marked "has been cultivated." Have you fixed the number of acres in that piece of ground?

A. Yes I fixed it. Would you like the acreage?

Q. Yes.

A. It is ten and a fraction.

274 Q. It is included in the total 65.4 of cultivated ground?

A. Yes sir.

Q. Also at the southeast corner of your plat I notice a piece of land that you say has been cultivated. Is the area of that piece included in the 65.4 acres also?

A. It is. The 65.4 is the area of the enclosure within the yellow line which has been cultivated between these lines. It is the cultivated enclosure.

Q. Then the 65.4 acres includes all of the land that was within this enclosure?

A. Yes sir. The shaded part on the plat shows what is in cultivation now.

Q. That has not been calculated by you?

A. No.

Q. Now, the ridge that you have testified to is simply where two or three fences have been pieced together, is it not, and you took that from the statements of the witnesses to have been the location of the old fence?

A. Yes sir.

Redirect.

By Mr. Veasey:

Q. Were there any other indications of an old fence than the statements of the witnesses?

(Huckleberry: I object to that. That has been gone over).
(Objection noted.)

Q. —in the case of the north and west line?

A. Do you want me to answer that?

Q. Yes.

A. Yes, as I stated before.

Q. Could you have found the fence lines without the statements of the witnesses—on the north?

A. That is a very difficult question to answer. I could now having had my attention called to it. On the west end I would have taken it for a fence, and it shows so plainly that any one would have taken it for a fence for several hundred feet from the corner.

Q. And there is a big post at the northeast corner, as indicated?

A. Yes sir.

Q. About how many acres are included within the exterior yellow lines?

A. 205 and a fraction acres.

Witness excused.

T. H. GIBBS, being duly sworn testified as follows:

Direct examination.

By Mr. Veasey:

Q. What is your name?

A. T. H. Gibbs.

Q. Where do you live?

A. Near Bartlesville.

Q. How old are you?

A. 64.

275 Q. Are you acquainted with the land in controversy in this case?

A. Yes sir.

Q. Are you acquainted with Wallace Thursday?

A. Yes sir.

Q. Were you acquainted with Jacob Wheeler during his lifetime?

A. Yes sir, I was.

Q. Are you acquainted with William Johnstone?

A. I am.

Q. When was you first acquainted with the land in controversy and lands in the immediate neighborhood?

A. When I was breaking prairie for Mr. Johnstone.

Q. About when was that?

A. I don't know that I can give the dates.

Q. Can you tell me about how many years ago?

- A. I think about 20 as near as I can remember it.
Q. Where were you living at that time?
A. Just a mile south of there—probably a little over that.

Commissioner:

- Q. South of where?
A. Of the land in controversy.

Veasey:

Q. Are you familiar with the 80 acre tract north of the land in controversy?

A. Yes sir.

Q. And with the one south of it?

A. Yes sir.

Q. Do you remember about when Jacob Wheeler built the cabin that is now on the land?

A. Yes but I couldn't give the date.

Q. Was it before or after Mr. Johnstone made a place in that neighborhood?

A. After.

Q. Are you familiar with the improvements Mr. Johnstone started, west of the Wheeler cabin?

A. Yes sir.

Q. Did you have anything to do with the improvements that were made?

A. Yes sir, I broke the lines out.

Q. What do you mean by the lines?

A. We called them fire-guards then.

Q. What were they broken out for?

A. It was broke out for to set the fence on. The grass was very high and the fence was put up so as to keep the posts from burning—that was my understanding.

Q. About how many acres were included within these furrows or fence lines that you broke out?

A. Between 160 and 200 acres. The lines were staked off and I broke the fire-guard.

Q. Did it run further north and south than it did east and west, or was the reverse true?

A. I don't know.

Q. Do you know how far south it ran?

A. No, I don't know.

Q. Do you know how far it ran east and west?

A. No, but it was just a square.

Q. Did you break out any land within these fence lines that you broke?

A. No sir.

276 Q. You say this was done before the Wheeler cabin was built?

A. Yes sir.

Q. Have you any recollection of fences being built substantially following the breaking out of the lines that you did?

A. Yes sir, I couldn't say just how long afterward but there were some substantial fences put there.

Q. Who put them there?

A. Mr. Johnstone put them there first.

Q. Are you positive about that?

A. I think so.

Q. Was any part of the place that you plowed included in the McDaniel 80—the one north of the one in controversy?

A. Yes sir.

Q. Was any part of the land in controversy included within the part that you plowed—any part of the land in controversy?

A. Yes sir, oh, yes.

Q. Was any part of the 80 south of the land in controversy included within the lines that you broke out?

A. No sir.

Q. Was that true of the fences that were afterwards constructed there?

A. I think so.

Q. Were you present when a survey was made of this land by Mr. De Yarmett, a few days ago?

A. Yes sir.

Q. Did you accompany him about the place as the survey was made?

A. I did.

Q. Did you indicate what, in your recollection, constituted the boundaries of the old Johnstone place?

A. Yes sir.

Q. Did you indicate what, in your recollection, marked the boundaries of the Jacob Wheeler farm?

A. Yes sir.

Q. How did you indicate or determine where those outside lines were?

A. The furrows was to have been thrown up for the old fences. Some part of the old fence was still standing, and some posts—corner posts, broken off.

Q. Did you find any post holes?

A. Yes sir, I think so.

Q. Do you recall any fence ridge running in a northwesterly direction across the McDaniel 80?

A. Yes sir.

Q. Did that fence ridge correspond with your recollection of the north fence of Johnstone's improvement?

A. Yes sir.

Q. Did it also correspond, in your recollection, with the north line of the Wheeler improvement?

A. Yes sir.

Q. Are you acquainted with the east line of the Wheeler improvement.

A. Yes sir.

Q. Did the line which you represented to the surveyor represent the east line of the Wheeler improvement?

A. Yes sir.

Q. Do you know what became of the Johnstone improvements?

A. I understood that he sold them to Mr. Wheeler.

Q. What did Wheeler do with the improvements he got?

A. He went to work and put him up a house, the first thing he did, and then enlarged the improvements he got from Johnstone.

Q. Did the east line of this improvement indicated by you to the surveyor, represent the east line of the Wheeler farm, as enlarged?

A. Yes sir.

277 Q. About how many acres would you say were in the old Jacob Wheeler farm, after he bought the Johnstone improvement, and after he had added to it?

A. I would think near 200 acres.

Q. Was it all enclosed?

A. I marked the fence round the entire body of 200 acres. I couldn't say positively that it was all enclosed out to the line.

Q. During the time that Jacob Wheeler owned this land were the 200 acres you have described surrounded by a fence?

A. Most of it.

Q. Where was it down?

A. On the west I think—part of the west.

Q. Where was that—just west of the house or west of the entire enclosure?

A. Northwest of it is my best recollection.

Q. So you know the condition of this enclosure when Wallace Thursday purchased it from Sam Bob in 1893?

A. I think it stood about the same.

Q. Were the fences about the place at that time?

A. Yes sir.

Q. Did the northwest line of the old Wheeler place run as far in that direction as the railroad now is?

A. Yes sir, I think it did. I don't know but what it crossed it.

Q. And from that direction south?

A. Yes sir.

Q. Did Johnstone ever pasture any cattle or cut any hay on the west part of the 80 that is in contest? Do you know about that?

A. He cut hay there but I couldn't tell you just where.

Q. Did you ever cut any hay there for him?

A. No sir.

Q. Did he ever cut any hay from the 40 immediately north of the land in controversy?

A. No sir, I never cut any.

Q. Did Johnstone cut any there?

A. I think so. I think I hauled hay for him from there, but it has been so long that I don't remember.

Q. When you hauled hay from that place was it within an enclosure at that time?

A. I couldn't tell you actually, I couldn't say, but I guess it was.

Q. How long ago was it that you hauled that hay from the place?

A. Right after I plowed out the lines and fixed that for him.

Q. You do not know that he ever hauled any hay from that place as late as 1890—12 or 15 years ago, do you?

A. No sir.

Cross-examination.

By Mr. Huckleberry:

Q. Some 20 years ago you say you plowed a fire-guard for Mr. Johnstone around 200 acres of land that lay in a square?

A. Yes sir.

Q. At that time there was no other improvements in that square?

A. No, it was open prairie.

Q. You didn't put any fence around that plowed ground at that time?

A. No sir I never had anything more to do with the land.

Q. You never put any fence there?

A. No sir.

Q. That was just raw prairie land enclosed within that
278 fire-guard when you quit it?

A. Yes sir.

Q. Is it not a matter of fact that a short time after that, down in the southwest corner of that land, Mr. Johnstone began some improvements, and broke out some cultivated land?

A. I don't know about that—I couldn't say that he broke out the land. I didn't break it.

Q. Is it not also true that sometime after Mr. Johnstone began cultivating in the southwest corner that Jacob Wheeler came inside that improvement and commenced an improvement, built a house, and broke out some land?

A. Mr. Wheeler might have broke out the land, but I don't remember of Johnstone breaking any land except the fire guard.

Q. Is it not true that the old Wheeler place is within this fire-guard that you broke?

A. Yes sir, it is within that enclosure.

Q. According to your recollection, Jacob Wheeler is the first to improve that land?

A. Yes sir, the house was the first improvement.

Q. And his breaking out the little was the first that you knew of within the fire-guard?

A. I don't know—

Q. Is it not true that he did the first fencing in the fire-guard?

A. It is possible. I didn't pay any attention to that after I got through my work.

Q. You do not remember just when Wallace Thursday bought this place?

A. No, I don't. I heard of it of course, but I couldn't say when it was.

Q. Is it not true that when Thursday bought in this yellow line on the plat, just west of the cultivated land—west of the orchard, is it not true that all north of that was just prairie land at that time?

A. I think so.

Q. Is it not also true, sir, that the prairie land north and north-west of the Wheeler house was unenclosed—not fenced in?

A. That is my recollection.

Q. Is it not also true that Thursday bought the improvement;

that he afterwards put the fence around on this old fireguard which you plowed, around the northwest corner of that land?

A. I couldn't say.

Q. Is it not true, sir, that it was put there by Thursday, or some one for him, after Thursday bought it?

A. I couldn't tell you.

Q. Is not that true? You said to me a moment ago that *that* the time Wallace bought this old Wheeler place, that, in your recollection, the northwest part of it was prairie land, and was not enclosed? Now I will ask you if it is not, also, true that Wallace Thursday after he bought it, put a wire fence along the fire-guard that you had plowed?

A. I couldn't tell you who put it there.

Q. It was put there after Wallace Thursday bought it, then?

A. I couldn't tell you that. My recollection is that Mr. Wheeler put it there.

Q. Didn't you tell me a while ago, sir, that this was open land, and that there were no fences when Thursday bought it?

A. Not that part, I don't think.

Q. Wasn't there an old road running right along the west of the yellow line—running through the center of this land to Bartlesville?

A. It ran along there somewhere, but I don't know whether it was in the center or not.

279 Q. Look at this plat please, Mr. Gibbs, can you see the yellow line?

A. Yes sir.

Q. Along the west of this cultivated land. Here is the orchard and the old Wheeler house. You see that do you?

A. Yes sir.

Q. I will ask you if it is not a fact that just west of this line there was not a public road leading into Bartlesville?

A. My impression is that it was on the east.

Q. East of the Wheeler orchard?

A. Yes sir east of the place.

Q. That is your best impression is it?

A. Yes sir.

Q. Don't you know that the present road is east of the Wheeler place?

A. Yes sir.

Q. But that the old road was west of the house, and west of the orchard?

A. No sir, I don't recollect that road. My best recollection is that it ran east of the old house.

Q. You are very positive about that are you?

A. Yes sir, I am pretty positive of it.

Q. Just as positive as you are about the rest of this, are you?

A. I don't know.

Q. Is it not true sir that this old road run west of the orchard a hundred yards or so, and that the land west of that was meadow land, and was unenclosed at the time Thursday bought it?

A. I don't know.

Q. Where did you live then?

A. Down on Sand Creek.

Q. When did you think of these things, since you plowed that old furrow?

A. It has been some time.

Q. You have never paid any attention to the place since you plowed the old furrow, have you?

A. Yes sir, I have been there.

Q. The first recollection you have of the improvements having been made was the house of Jacob Wheeler?

A. Yes sir.

Q. And the first fencing was done by Jacob Wheeler?

A. Yes sir.

Redirect.

Veasey:

Q. Mr. Gibbs, do I understand your testimony to be that the Jacob Wheeler house was within the lines you plowed?

A. Yes sir, I think so.

Q. Upon your direct examination you stated that this 200, or about 200 acres, was enclosed when Wallace Thursday bought it?

(Huckleberry: I object to that, because he did not so state, and for the further reason that such a question is absolutely leading. The attorney has no right to attempt to place such a statement in the lips of the witness.)

(Objection noted.)

Q. Did you make that statement?

A. Yes sir, I reckon I made it.

280 Q. Is that your testimony upon this point or is it that the land was not enclosed when Wallace Thursday bought it?

A. I said I couldn't tell you about that.

Q. You say you do not know whether the land was enclosed when Wallace Thursday bought it or not?

A. No I don't.

Q. Do you know the condition when he bought it—what the improvements were?

A. I know the house was put up and some fencing, but that is as far as I know about it.

Q. Can you say how much land was enclosed—under fence when Wallace Thursday bought it?

A. No sir, I couldn't tell you that.

Q. Where did you do the plowing on the fence line, with reference to the draw that it is on this land, running north and south or in a southeasterly direction?

A. I crossed the draw.

Q. Which way. Did you plow on the east side of the draw?

A. I get bothered.

Q. You know where the draw is do you? On which side of this draw was this fence line plowed by you?

A. It run east to where the old fence run around. It crossed the draw.

Q. Was it likewise east of the old Wheeler house?

A. Yes sir.

Witness excused.

WILLIAM JOHNSTONE being duly sworn, testified as follows:

Direct examination.

By Mr. Veasey:

Q. What is your name?

A. William Johnstone.

Q. What is your age?

A. 46.

Q. Your post office address?

A. Bartlesville.

Q. Are you a citizen of the Cherokee Nation?

A. By intermarriage.

Q. Are you acquainted with Wallace Thursday?

A. Yes sir.

Q. Did you know Jacob Wheeler during his life time?

A. Yes sir.

Q. Are you acquainted with the land in controversy in this case?

A. Yes sir.

Q. Are you acquainted with the McDaniel 80 just north of the land in controversy?

A. Yes sir.

Q. Are you acquainted with the 80 acre tract just south of the land in controversy?

A. Yes sir.

Q. How long have you lived in the neighborhood of Bartlesville?

A. Since August 1882.

Q. Do you remember when any of this 80 acre tract was first improved?

A. Yes sir, I put the improvement on the southwest 40 on Contestee's exhibit "1."

Q. Before that time did you have a fence row broken out by anyone?

A. I think I did sir.

281 Q. Do you remember who did that for you?

A. No, sir.

Q. Do you remember how many acres were included within that fence row?

A. I intended to have 80 acres included.

Q. Was this cultivated land that you described as being the southwest 40 acres tract of the three 80's, the only improvement that you had put upon these lands?

A. Well I intended to fence 80 acres right here along with these

two 40's. It was not just on the line, but the line run along the apex of this ridge, (indicating from a point about 300 yards west of the southeast corner of the southwest 40 acres indicated on Contestee's exhibit "1", thence north of the south boundary of the next 40) I intended to run it a half a mile north.

Q. Then which way was the improvement to go?

A. It run west a quarter of a mile, and then back south half a mile and then back east a quarter of a mile to the place of beginning. I intended to improve 80 acres, and this 40 acres was put in cultivation and a hog tight fence put around it.

Q. In regard to the 40 acres north of the part that was broken out, being the west 40 of the land in controversy, did you cause a fence to be put around it?

A. I am not so certain about that, but under the old Cherokee law a citizen was entitled to hold a quarter of a mile from his improvement, and I claimed it on account of this improvement.

Q. Don't you know whether or not you put a fence around that?

A. I think I did.

Q. Did you pasture that land?

A. No I think I used it for a meadow.

Q. Did this old improvement of yours include any of the McDaniel 80?

A. I don't hardly believe it did, sir.

Q. Were the improvements that you described the first improvements that were made in that neighborhood?

A. Yes, on that particular ground.

Q. After you made your improvements, were any others made on any part of the land included herein?

A. Yes, Mr. Wheeler built a house on this land.

Q. Then what became of your part of the land?

A. I sold it to him.

Q. Do you remember about when you did that?

A. Along about 1889 or 1890.

Q. At the time you sold it to him was the west 40 of the land in controversy, which you say you used as meadow—was it enclosed?

A. I think it was.

Q. Did Wheeler add to the place which you sold to him?

A. Yes I think he did. He put up some fencing and fenced it about like that yellow mark indicated.

Q. The outside yellow mark on Contestee's exhibit "1"?

A. Yes, sir.

Q. What became of the land after he had improved it to the extent indicated by the outside yellow lines?

A. He afterwards sold back to Johnstone and Keeler.

Q. About when was that?

A. Johnstone & Keeler bought it in December, 1891.

Q. At the time you bought it from Jacob Wheeler what part of the land in controversy and the 80's north and south did it include?

A. At the time we bought it back from Jacob Wheeler it included about all the land in controversy—all between the yellow lines.

Q. How about the north 80?

282

A. It was raw land.

Q. It was enclosed, wasn't it?

A. Yes, sir.

Q. And the 80 south?

A. It was land that I already had in cultivation when I sold it, and the east 40 is indicated by the outside yellow lines.

Q. What did you do with that?

A. I sold to Mary Anson and Sam Bob.

Q. Was there a bill of sale made by you evidencing this transfer to Mary Anson and Sam Bob?

A. Yes sir, I think so.

Q. You were present and testified when this case was tried before?

A. Yes sir.

Q. Do you remember whether the bill of sale was introduced in evidence, and identified by you at that time?

A. No sir, I don't.

Q. When you sold the land to Mary Anson and Sam Bob in 1893, about what part was in cultivation—about how many acres?

A. I should judge—I don't know but I should judge about there was about 80 acres in cultivation.

Q. The rest of it, as indicated by the yellow lines, were meadow and pasture?

A. Yes, sir.

Q. Do you remember the consideration you received for this farm?

A. I think I got \$800 for it.

Q. How did you receive your payment for the farm?

A. There was one of the Johnstone & Keeler books that I couldn't find, but after the first big payment—the Delaware payment—the money was paid out to the heads of the Delaware families. The head of the family drew for his family and wards, there were no banks in the country then and they usually deposited their money with the people they traded with. I think the accounts showed that Mary Anson had a balance coming to her after her store account was paid, and just before the last big payment, on August 11, 1893, we sold this to Wallace Thursday. When he drew for his family in this payment, as I said, there were no banks in the country and the people usually deposited their money with the stores where they traded, and part of this was applied to the store account, and the rest of this payment was credited to Mary Anson on our books, on the farm.

Q. About when was the first large Delaware payment made?

A. I couldn't tell you for that is the book I couldn't find. I think though, about 1890.

Q. Do you remember the per capita?

A. I think the two payments aggregated \$1000. One was \$490 and the other \$510 I think.

Q. When the first payment was made, was Mary Anson indebted to your firm on a store account?

A. Yes, sir.

(Huckleberry.—We object to this for the reason that it has been gone into on the former trial.)

(Veasey.—This will show the interest all right.)

(Huckleberry.—Will you allow me to finish, please?)

Q. You say you have no means of knowing what the store account was that was due you at the first payment?

283 A. No, sir.

Q. Have you any memorandum from your books as to the amount that was due you on store account by Mary Anson at the time of the second payment?

A. Yes, sir.

Q. What does that memorandum show you?

A. \$780.63.

Q. Was any part of that for the farm which you sold to Mary Anson and Sam Bob?

A. Yes sir, \$400.

Q. How had you received the other \$400.

A. As I remember they had it on deposit with Johnstone & Keeler, and they paid it out of that, or it was just credited to Mary Anson on our books, as I said before.

Q. When the next Delaware payment was made did you receive the check of Mary Thursday and Sam Bob? You got the per capita of both Mary Thursday and Sam Bob?

A. I think so.

Q. Did you apply any of that to the store bill at that time?

A. Yes sir—Sam Bob wasn't known in it it was Mary Anson.

Q. You do not know how much they owed you?

A. No sir. The rest of the money they left with us.

Q. And it was applied to the payment of this farm?

A. Yes, sir.

Q. When the second Delaware payment was made you got both per capita's?

A. Yes, sir.

Q. The store account was \$780.63?

A. Yes, sir.

Q. That included \$400 for the farm?

A. Yes, sir.

Q. They paid for the farm in full?

A. Yes, sir.

Q. Do you happen to recall whether or not after the farm was paid for and the store bill was paid, you returned any money to Wallace Thursday?

A. I don't remember, but I suppose I did.

Cross-examination.

By Mr. Huckleberry:

Q. You were familiar with the laws and customs of these payments at that time were you?

A. Yes, sir.

Q. If I understood you Mary Anson drew the money at both payments, and the accounts you credited were with Mary Anson?

A. Yes sir, that was the only name I had on the books.

Q. And the payments were made to Mary Anson?

A. Yes, sir.

Q. And all the business was done in the name of Mary Anson?

A. Yes.

Q. You didn't know Sam Bob in the deals?

A. No, sir.

Q. So far as your books showed you had nothing of Sam Bob's in your possession?

A. No, sir.

Q. At the time of the second payment you think there was some store bill or account owed you by Mary Anson?

A. Yes sir.

Q. That family included Sam Bob?

A. I suppose so, he lived with them.

Q. \$400 of that money that was on deposit with you was used to pay for this farm?

284 A. Yes sir; that is my recollection.

Q. Is it not a fact that all of the trade in the purchase of this place was made by Wallace Thursday?

A. Yes sir.

Q. And the crediting of the money from the Mary Anson account to the place was by his authority, was it not?

A. Yes sir. She is deaf and kinder crazy hereself and don't know how to do any business.

Q. Is it not a fact that the Mary Anson check was turned to you by Wallace Thursday?

A. Yes sir.

Q. Is it not a fact that at the time of the second payment, that check was turned to you by Wallace Thursday?

A. I think so.

Q. And credited by his order to the Mary Anson account?

A. Yes sir.

Q. Was there any statement at that time by any one that any part of this Mary Anson money belonged to Sam Bob, or that you were responsible to Sam Bob for it?

A. No I think not. Of course I knew that some of it was Sam Bob's.

Q. You knew that she drew Sam Bob's share of the money?

A. Yes.

Q. But wasn't it a fact that the heads of the families used the money they drew for their families and made no account of it?

A. Yes sir.

Q. Is it not also a fact that the money was paid directly to the heads of the families, and no inquiry was made as to whether or not there was a guardian for the minors?

A. That was the way it was done.

Q. Is it not also a fact that at the time they received this money the heads of the families used it as they saw fit?

A. Yes sir.

Q. Bought supplies and paid bills?

A. Yes sir. We always carried those people and the checks were turned to us and we created the heads of the families.

Q. Referring to the plat, you say that when you began these improvements you intended to enclose within it about 80 acres of land?

A. Yes sir.

Q. And that the first improvement and cultivation by you was on the southwest quarter of this, being the southwest 40 of the south 80?

A. Yes sir.

Q. Is it not also true that while you were improving down on that southwest 40, on the east 40 of the land in controversy Jacob Wheeler began improving a little place within your quarter?

A. Yes sir. I think my improvements were there first, though.

Q. Then you sold out what you had there to Jacob Wheeler?

A. Yes sir.

Q. Afterwards you bought it back from Wheeler and sold what you bought to Thursday?

A. Yes sir—or Mary Anson.

Q. Do you remember the year in which this old orchard was started there?

A. No sir, I don't, it was shortly after I made the other.

Q. Do you remember what fencing Jacob Wheeler had done at the time you sold out to him?

A. No I don't. I think he had a little patch broken out north and west of the house.

Q. Looking at this plat—at the McDaniel 80—do you know whether that fence had been built around there or not?

235 A. Yes I think it had been. The part that he put in cultivation was just a small tract of about 10 acres. It was on the east 40 of the land in controversy and the east 40 of the McDaniel land.

Q. Do you remember when this fence was extended out to the east?

A. No sir.

Q. Do not recall that?

A. No sir.

Q. You do remember, if I understand your testimony, however, that Wheeler extended your fence south?

A. Yes I think so, but I cannot be positive.

Q. I notice on the north of the southwest 40 on Contestee's exhibit "1," a yellow line which is said to be an old fence ridge and an old fence. Do you remember whether you or Wheeler built that fence?

A. I think I built it.

Q. That was the north line of your cultivated land?

A. Yes sir.

Q. It is not true that when you sold to Wheeler there was a fence running in a northwesterly course through the McDaniel 80, is it?

A. No, I don't think so.

Q. Do you remember when that fence was built?

A. No I don't, but I think it was built while Wheeler owned the land.

Q. Exendine owned the place just west of this?

A. Yes sir.

Q. This fence would have been within the quarter limit, would it not?

A. Not at that time, his farm didn't extend out there at that time. He commenced down about in here and joined Wallace Thursday, and from there on to Sand Creek (indicating land south of the land on the plat).

Redirect.

Veasey:

Q. The check that you got from the first payment paid Sam Bob's share of the per capita and also Mary Thursday's?

A. Yes sir, that is my understanding.

Q. And at the second one too?

A. Yes sir.

Commissioner:

Q. Who is Mary Anson?

A. She is on the Delaware roll as Mary Anson. She is the wife of Wallace Thursday.

Q. Was she married to Wallace Thursday at the time she drew the money?

A. He was married to her at one of the payments I think. Old man Journeycake objected to paying the money out unless people were living together lawfully, and not as was the custom and habit of the Indians to just take up together, and he married her there.

Q. You are a member of the firm of Johnstone & Keeler?

A. Yes sir.

Q. At the time Johnstone & Keeler sold this land to Mary Anson and Bob was her name Anson or Thursday?

A. We carried her name on the ledger as Mary Anson, on account of her name being that way on the roll.

286 Witness excused.

Veasey: The contestee, Sam Bob, desires to pay to the contestant, Ella Heady, the \$2,700 that was received by Wallace Thursday from the sale of the improvements on the land in controversy, and hereby tenders the same to her attorneys of record.

ANDREW REED, being duly sworn, testified as follows:

Direct examination.

Davidson:

Q. What is your name?

A. Andrew Reed.

Q. How old are you?

A. About 50 years old.

Q. Where do you live?

A. I live about 6 miles south of Bartlesville.

Q. How long have you lived there?

A. About 17 years.

Q. Do you know the land that is in controversy in this case?

A. Yes sir.

Q. How long have you known it?

A. Why, since about 1887.

Q. Do you know the 80 acres of land right south of Bartlesville belonging to Fred McDaniel?

A. Yes sir.

Q. Is the land immediately south of that the land in contest in this case?

A. Yes sir.

Q. Of whose place or farm was that a part at one time?

A. The Jacob Wheeler place.

Q. Do you know who made the first improvement there?

A. Not on the cultivated land.

Q. Any improvement?

A. I *hope* build a house on that part of the land.

Q. Whose house?

A. Jacob Wheeler's.

Q. It was built for Jacob Wheeler?

A. Yes sir.

Q. Did any one else ever own the place besides Jacob Wheeler?

A. Bill Johnston owned it.

Q. Do you remember when Wallace Thursday bought it?

A. No sir, I don't remember.

Q. Do you remember the occasion?

A. Yes sir, I know that he bought it.

Q. You do remember just the time?

A. No sir, I don't.

Q. Where were you living then?

A. I was living on the place I am on now—6 miles south of Bartlesville.

Q. Near this land?

A. Yes sir, about—on the section line it is about three and one half miles from my place. It is further around the wagon road.

Q. Do you know who sold the place to Wallace Thursday?

A. My understanding was that Johnstone sold it to him.

Q. Now Mr. Reed about how large a place—how many acres, were sold to Wallace Thursday by Johnstone?

A. To look at it and guess I would say 160 acres or upwards.

287 Q. Was that place enclosed by a fence?

A. Yes sir, there was a fence around it.

Q. Were you on this land a few days ago?

A. Yes sir.

Q. In company with Mr. De Yarmett, a surveyor?

A. Yes sir.

Q. Did you go with the surveyor and others around this land?

A. Yes sir.

Q. Did you point out to him what were the old fences on the place that Wallace Thursday bought?

A. Yes sir.

Q. How did you find out where those fences were—how did you determine it?

A. By the old fence row that looked to me like it had been broke out once for a fence row.

Q. Were there any posts there?

A. Once in a while.

Q. Find any holes?

A. Some, yes sir.

Q. That was the old Johnson and Wheeler place as you knew it?

A. Yes sir.

Q. And you think it contained, at the time Wallace Thursday bought it, something like 160 acres or more?

A. Yes sir.

Q. Would you say there were more or less than 160?

A. Something about like that, I couldn't guess just exactly what there was in it, but that would be my guess.

Q. Was there any meadow or pasture land inside the enclosure?

A. Yes sir, land that was not broken out.

Q. Can you say how much of that there was?

A. No sir I can't.

Q. Now, I will ask you, Mr. Reed, if that old place that you speak of—that old enclosure that was sold to Wallace Thursday—included any part of the McDaniel 80?

A. Why, the south part of it.

Q. Did it include any part of the land that is in contest in this case—south of the McDaniel 80?

A. A part of that land.

Q. What part?

A. The north part.

Q. Did it include the south part too?

A. What? The McDaniel land?

Q. No, I mean the land in controversy.

A. Yes sir, and then you see the south part of the McDaniel 80 was in this enclosure and—

Q. How much of this land in controversy was in that enclosure?

A. I don't know just how much there would be.

Q. Was there any land south of the land in controversy that was included in the old Johnson and Wheeler place?

A. Yes sir.

Cross-examination.

Huckleberry:

Q. How far do you live from there?

A. I live something, like, on the section line, three and one half miles.

Q. There has been a lot of fencing in that country in the last 20 years?

A. Yes sir.

Q. You say the first improvement that you know of was the building of the Wheeler house?

288 A. I said I knew of that.

Q. Was there any land in cultivation when that house was built?

A. I don't remember.

Q. What year was the Jacob Wheeler house built?

A. In 1887.

Q. You helped build it you say?

A. Yes sir.

Q. Who set out the orchard there?

A. I don't know. It was set out after the house was built.

Q. When was it set out?

A. I don't know.

Q. Who fenced first?

A. I don't know.

Q. When was the fencing done?

A. I don't know.

Q. Wasn't the main Bartlesville road on the west side of the Wheeler house once?

A. Yes sir.

Q. Do you remember when that road was stopped up and set over on the other side of the Wheeler house?

A. No I don't. The road changed and run up Sand Creek and from my place I traveled that way to Bartlesville.

Q. And you did not go any more through the Wheeler place?

A. No, maybe not for a year at the time.

Q. You don't know who built the fences?

A. No.

Q. Nor when they were built?

A. No sir.

Q. Do you know when Wallace Thursday bought the place?

A. No sir.

Q. Do you know when that old road was vacated?

A. No I don't.

Q. It has not been over 6 or 7 years since that road was used through there, has it?

A. I don't remember.

Q. Wasn't it used less than 5 years ago.

A. I don't know.

Q. Can you give me any idea about when that road was stopped up?

A. No I couldn't give you any correct idea about it.

Q. When you went with the surveyor you went around and was where some old fences had been built, and you don't know when they were built, or by whom?

A. No, I don't. I don't know when the place was sold.

Q. You don't know when the road was stopped up?

A. No, for I don't travel through there. There was a bad swamp

south of Sand Creek, and when the road was changed in there, I went the other way.

Q. When did they build that new road on the east side of the house.

A. Several years ago.

Q. How long ago?

A. I lived where I am now before I moved down on Sand Creek, and when I lived down there the road was on the west side of the house and when I moved back to my place they had built this upper road and it was nearer to Bartlesville and a better road than the old one, so I have always since then, gone to Bartlesville by the upper road.

Q. You went through the place to Bartlesville before you moved down south of there, and when you moved back up where you are now, you went another road?

A. Yes sir.

Q. When did you move down there?

289 A. I couldn't tell you the year.

Q. Give me some idea?

A. I never kept track of what I done. Those years I did first one thing and then another.

Q. Who owned the old Wheeler place when you moved?

A. I believe Bill Johnson owned it at the time I moved back to my own place.

Q. Don't you know that Wallace Thursday owned it at that time?

A. No, I don't.

Q. You don't know for sure who owned it when you moved away from that neighborhood, do you?

A. To the best of my recollection Bill Johnstone owned it.

Q. He had bought it then from old man Wheeler?

A. That is my recollection about it.

Q. That is the last time you knew very much about the place?

A. Yes sir.

Witness excused.

ROBERT WHEELER, being duly sworn, testified as follows:

Davidson:

Q. What is your name?

A. Robert Wheeler.

Q. How old are you?

A. Going on 43.

Q. What is your post office?

A. Bartlesville.

Q. You live at Bartlesville do you?

A. Yes sir.

Q. Did you know Jacob Wheeler during his life time?

A. Yes sir.

Q. Was he a brother of yours?

A. Yes sir.

Q. Do you know the land in contest in this case?

A. Yes sir.

Q. Do you know where it is?

A. Yes sir.

Q. Was that a part of your brother's place near Bartlesville?

A. Yes sir.

Q. How far is it from Bartlesville to this land?

A. It is right in the south part of town now.

Q. When did your brother own this place, do you remember?

A. It has been a good many years.

Q. Do you remember when he built that little house?

A. It has been about 19 years ago this fall to my best knowledge.

Q. Since that house was built?

A. Yes sir.

Q. Did you help build it?

A. I was there but I don't know whether I helped build it or not.

Q. Do you remember your brother buying a place from Bill Johnstone.

A. Yes sir.

Q. After he bought the land from Johnstone did he extend it any?

A. He put the fence clear around after he bought it from Johnstone.

Q. About how many acres did he enclose?

A. Somewhere in the neighborhood of 190 or 200 acres.

Q. Did that land that your brother enclosed under fence include any part of this land in controversy?

290 A. Yes sir.

Q. Do you know the Fred McDaniel 80?

A. Yes sir.

Q. Right south of Bartlesville?

A. Yes sir.

Q. I will ask you if any part of that land was included in the old place that belonged to your brother?

A. That fence was run right along through the McDaniel place.

Q. About how much of that McDaniel place did it cut off into the Wheeler place?

A. It would be a pretty hard matter for me to say.

Q. Would it be as much as half of it do you think?

A. Yes sir, I expect it would.

Q. Now, does this land in contest here lie south of the McDaniel 80 or not?

A. South.

Q. Was that a part of the old Wheeler place?

A. Yes sir.

Q. Was there any land south of that in the old Wheeler place?

A. Yes sir.

Q. Do you know who built the fence around this place? I think you stated your brother did?

A. Yes sir.

- Q. After he bought it from Johnstone?
A. Yes sir.
Q. Do you know how long your brother held it after he bought it from Johnstone?
A. No.
Q. Do you know what he did with it?
A. The place?
Q. Yes.
A. He sold it to Johnstone.
Q. How long did Johnstone have it then?
A. I don't know.
Q. What did he do with it?
A. Sold it to Wallace Thursday.
Q. When was that?
A. I don't remember.
Q. Were you on this place a few days ago, with the surveyor and Mr. Gibbs and Wallace Thursday?
A. Yes sir.
Q. Did you go around with them?
A. Yes sir.
Q. Around this place?
A. Yes sir.
Q. What were you there for?
A. I was there to show where the lines ran.
Q. The lines of your brother's old place?
A. Yes sir.
Q. Did you find the lines.
A. Yes sir.
Q. How did you find them?
A. I knew where the fences were.
Q. Did you see any marks that indicated that a fence had been there.
A. I saw where the furrow run—where they plowed it up to put the fence.
Q. Did you find posts and parts of a fence?
A. Yes sir, and a few posts.
Q. What did you find on the north line, running through the McDaniel 80?
A. Posts and holes.
Q. Was that line easily seen?
A. Yes sir, anybody could see it.
Q. How about the west line—down along the railroad?
A. That was easily seen.
291 Q. And the surveyor was with you at that time, and made notes in his book?
A. Yes sir.

Cross-examination.

Huckleberry:

- Q. You did not have much trouble showing the lines to the surveyor, did you?

A. No sir.

Q. He had no trouble in finding it?

A. No sir.

Q. He surveyed down it with no help from you?

A. I don't know about that.

Q. He could have followed right along without your having to tell him that that was the fence, couldn't he?

A. I don't know.

Q. There were a lot of posts along there, were there not?

A. I didn't see a whole lot of posts.

Q. What did you say about it?

A. I said once in a while you would find a post—a burned post.

Q. Would it be up or lying on the ground?

A. Down pretty low.

Q. Where did you live all of this time?

A. I live at Bartlesville now.

Q. Where did you live before you went to Bartlesville?

A. On the old home place.

Q. Where is that?

A. Where Burford lives now.

Q. Were you down where Burford lives all of this time?

A. Most of the time.

Q. Did you live there when your brother made this little house?

A. Yes sir.

Q. Did you live with him there on his place or back on your place?

A. I never lived on this place.

Q. What year did your brother build this house?

A. I don't know. I don't remember the year. It has been about 19 years this fall.

Q. Who told you that?

A. The reason I know—I was married in—it will be 19 years this July, and it was built that fall.

Q. That was the first improvement in there?

A. Yes sir. Well there was a little field down in there.

Q. That belonged to Bill Johnstone?

A. Yes sir.

Q. How much of it?

A. About 40 acres.

Q. Was that all?

A. Yes, when that house was built.

Q. Who made the next improvement—when did he buy it from Bill Johnstone?

A. I don't know.

Q. Did Johnstone do anything only break out that 40 acres?

A. I don't know.

Q. Did Wallace Thursday do any fencing?

A. I don't know. I wasn't around in there.

Q. When did Wallace Thursday buy it?

A. I don't know.

Q. When did your brother sell to Johnstone & Keeler?

A. I don't know.

Q. You don't know much about the years?

A. No sir.

292 Q. Do you remember the old road that led to Bartlesville, west of the house?

A. Yes sir, right north of Johnstone's 80 acres.

Q. That was the main traveled road a long time wasn't it?

A. Yes sir.

Q. When did they close up that old road?

A. I suppose it was closed up when Jacob put that fence around there.

Q. Do you know when they stopped travelling it?

A. No I don't.

Q. Can't you give us about the year they stopped travelling that road?

A. No.

Q. As a matter of fact there is a road there now, isn't there?

A. I don't know whether there is or not.

Q. You were out there the other day?

A. There is a wire fence there that you can't get through.

Q. Wire fence where?

A. North of the house.

Q. That is the fence that Heady put in is it not?

A. I don't know.

Q. The old fences that stopped this road is on the north 80 and one on the south 80?

A. Yes sir.

Q. Do you know when these fences were put there?

A. No.

Q. They have been put there within the last 2 years haven't they?

A. I guess so.

Q. When was the last time you travelled the old road?

A. That is too hard for me.

Q. Was it 5 or 6 years ago?

A. I couldn't say.

Q. 10 years ago?

A. I just couldn't tell you.

Q. Give me some idea about it?

A. I couldn't.

Q. Who lived in that house the last time you travelled it?

A. I couldn't answer that either.

Mr. Hastings:

Q. Were you ever tried in the courts for anything?

A. No, never in the court that I remember of.

Q. You don't know do you?

A. I was never tried in the United States Court.

Q. In any court?

A. I was here a long time ago for disturbing the peace.

Witness excused.

WALLACE THURSDAY, being duly sworn, testified as follows:

By Mr. Veasey:

Q. What is your name?

A. Wallace Thursday.

Q. How old are you?

A. About 55 years old.

Q. What is your post office address?

A. Bartlesville.

Q. Are you a citizen of the Cherokee Nation?

A. Well, I can't tell you. I thought I was at one time, but I don't know whether I am or not.

293 Q. Are you enrolled as a doubtful citizen?

A. I don't know how I am enrolled.

Q. You know you are on the roll as a doubtful citizen, don't you?

A. I don't know.

Q. Do you know Sam Bob?

A. Yes sir.

Q. Do you know Mary Thursday?

A. Of course I know her. She is my wife, and I have lived with her for 20 years.

Q. Are you familiar with the land in controversy in this case?

A. Yes sir.

Q. Did you know Jacob Wheeler in his life-time?

A. Yes sir, I knew him when he was a boy.

Q. Do you—do you know who has owned the improvements on the land in controversy in the last 5 or 6 years?

A. The last 5 or 6 years?

Q. Yes who owned the improvements 5 or 6 years ago?

A. It has been longer than that since I have owned it.

Q. Who made the improvements—do you know who made the improvements on the land in controversy?

A. Johnstone made the first, and Wheeler made the place we are talking about, I expect.

Q. What became of the improvements on the place that Johnstone owned.

A. He (Wheeler) tore them down and enlarged the place with it.

Q. What did Wheeler do with the place after he had enlarged it?

A. Sold it back to Johnstone.

Q. What did Johnstone do with it after he bought it back from Wheeler?

A. He sold it to me for Sam Bob.

Q. Was there a bill of sale made at the time this sale took place?

A. There was a bill of sale made for so much of the money, and the time of the big payment, I finished paying the balance.

Q. How much land did you buy from Johnstone for Sam Bob, including the cultivated land, pasture land, meadow land and everything like that?

Q. We called it 200 acres in our old Indian ways of calling it. But what we called an acre then would make two now.

Q. You called it 200 acres?

A. Yes sir.

Q. Of those 200 acres how much was in cultivation, or about how much as you thought then?

A. About 80 or 90 acres.

Q. Was all of this 200 acres that you thought you were buying, under fence when you purchased it?

A. Yes sir, at that time we didn't buy land by the acre, but if a man had improvements we bought them and nothing was said about the land.

Q. Do you know where the Fred McDaniel 80 is?

A. Yes sir.

Q. Was any of that included in the purchase from Johnstone?

A. No Johnstone's didn't reach up to McDaniel's, but Jacob Wheeler's did.

Q. You bought the old Jacob Wheeler farm?

A. Yes sir.

Q. Did it include any part of the McDaniel 80?

A. Oh! yes.

Q. About how much?

A. There must have been 49 acres.

Q. Did the old Wheeler farm, that you purchased for
294 Sam Bob, include any of the 80 acres in contest in this case?

A. Why, yes sir, that is where the house and orchard was when I bought it.

Q. How much of the 80 that is in contest was in the old Jacob Wheeler farm, and surround- by the old Wheeler fences?

A. It surrounded what I bought from Johnstone and his fences too. We didn't have no cross fences.

Q. How many 80's as you understand it now was included in the old Wheeler farm?

A. Three as I know it now.

Q. Which 80's did that include?

A. I sold the first 80 and that would leave the two 80's here.

Q. What are they?

A. The 80 that I filed my homestead on is just south of the land in controversy.

Q. You say that about 49 acres of the old Wheeler place were included in the McDaniel 80?

A. Yes sir.

Q. Did you ever extend your improvements after you bought it from Johnstone so as to include all of the McDaniel 80?

A. Yes sir, I moved the fence north of it. I moved the fence out over 14 acres that I improved on to the line.

Q. Did you ever move the west fence of the old Wheeler farm?

A. No sir, I never moved that only where the railroad cut it off, and I moved it in.

Q. That is just as you bought it?

A. Yes sir.

Q. Wallace, how did you happen to buy this place for Sam Bob?

A. Mr. Johnstone told me it would be a good thing if I would put Sam's money into something that would show when he was grown. He said he had a piece of land that he would sell and that I had better put his money into that, and it would show after Sam was of age.

Q. Did you put Sam's money into the place?

A. Yes sir.

Q. Who had Sam's money at the time you bought this place?

A. Johnstone had it.

Q. In fact, what money was there that belonged to Sam?

A. That payment.

Q. How much of Sam's money did Johnstone hold out of Sam's first payment?

A. Four hundred and some odd dollars, I don't know just how much. It has been a long time for a man to recall upon a trial right straight.

Q. How much of Sam's money did Johnstone hold out of the last payment to go to paying for this farm?

A. I expect he held it all because he got paid for the place out of it.

Q. Did you turn the Delaware check including Mary Anson and Sam Bob's money over to Johnstone?

A. Yes sir, I did twice.

Q. At that time did you owe Johnstone a store bill?

A. Yes sir. I always did at that time, for that was the only chance for us to live.

Q. Did he take out of this payment money the store bills due him?

A. Yes sir, I think he did. He give me some of it back after it was paid.

Q. Whose money was to be applied to the store bill?

A. My wife's.

Q. Did you owe Johnstone a store bill when the second Delaware payment came?

A. The second big payment—yes sir, I guess I did.

Q. Did you turn the check over to him at that time, just
295 as you did before?

A. Yes sir.

Q. Did he apply a part of that payment to pay the store bill?

A. The last time I don't suppose I had but a little store bill.

Q. Do you remember what you did owe him on a store bill at the last payment?

A. No I don't remember, it has been a long time. I had it on a book but the book is lost.

Q. Whose money did you intend should go into this farm?

A. Sam Bob's.

Q. Did you understand that Sam Bob's money did go into this farm?

A. Yes sir.

Q. What became of the McDaniel 80?

A. I sold it to McDaniel.

Q. How much did you get for it?

A. \$800.

Q. What became of that money?

A. It is in the bank up there.

Q. What bank?

A. First National Bank.

Q. To whose credit is it?

A. To mine—no, to Sam Bob's. It was to mine.

Q. It is to your credit as guardian then?

A. Yes sir.

(Veasey: We desire to offer as evidence a telegram which came to the Commission this morning, from the First National Bank of Bartlesville, to the effect that Wallace Thursday, as guardian, has had a certificate of deposit for \$800 with them continuously from October 23, 1903 until now).

(Hastings: Contestant desires to object to that because it is just a new way of attempting to get this in evidence in a contest case, and the attorneys for contestee knows full well that even affidavits of witnesses are not admissible in evidence much less telegrams sent over the wire).

Commissioner: The telegram referred to will be received in evidence, subject to Contestant's objection and marked for identification, Contestee's exhibit "2."

Q. Wallace, have you or have you not always regarded the Wheeler farm as the property of Sam Bob?

A. Yes sir, I have always regarded it as Sam Bob's property.

Q. Wallace, the bill of sale that was introduced in evidence at the former hearing, signed by Johnstone & Keeler, said that 90 acres of land was sold to you. Can you explain that?

A. 90 acres?

Q. Yes.

A. Yes sir. The Wheeler place, when Johnstone bought it back, including the two places, would be 90 acres.

Q. In cultivation?

A. Yes sir.

Q. That did not include all of the farm?

A. No just the farming land.

Cross-examination.

Mr. Hastings:

Q. You testified in this case once before, didn't you?

A. I expect I did.

296 Q. At that time you testified that part of the money that went into this was "The old lady's" meaning your wife, didn't you?

A. Well I might have said some of the old lady's went in. I give Johnstone the check.

Q. It was all one check?

A. No, there was two checks.

Q. If Bill Johnstone swore there was just one check, he is mistaken is he?

A. I don't know.

Q. Wasn't it all in one check?

A. That has been so long ago that a man without no education don't know and can't say.

Q. Didn't you draw it?

A. Yes sir, I took it and give it to Mr. Johnstone.

Q. How many did you draw?

A. I said two, but it might have been one.

Q. Are you swearing it?

A. No.

Q. You don't know how many? Was there one or two?

A. I don't know. That is my recollection.

Q. In whose name was the check?

A. Mary Anson and Sam Bob.

Q. If Bill Johnstone says that it was made in one check to Mary Anson, and not to Sam Bob, is he mistaken?

A. It might have been done.

Q. Why did you attempt to file upon part of this land?

A. I have raised the boy, and labored——

Q. What labor have you done?

A. I have kept it up for him for several years, and moved some of the fences, and repaired them nearly every year all round.

Q. Did you repair it on the west?

A. Yes sir.

Q. On the north?

A. Yes sir.

Q. You didn't contend when you testified in October 2 years ago that there was more than the bill of sale called for, did you?

A. They didn't ask me whether there was any more or not.

Q. That question was not asked you?

A. No sir.

Q. That is the reason you didn't contend?

A. Yes sir.

Q. To whom was the bill of sale given when you bought it?

A. To me.

Q. Wallace Thursday?

A. Yes sir.

Q. From Johnstone & Keeler?

A. Yes sir.

Q. Made to Wallace Thursday?

A. Yes sir—or Mary Anson.

Q. That is the one that was introduced in evidence?

A. It was given to Mary Anson, but she is my wife, and I consider what is hers is mine. It was made to me and my wife signed to it.

Q. That is the way the bill of sale was made?

A. I am not — educated person.

Q. That is the way you told Johnstone & Keeler to make it?

A. I didn't tell them.

Q. Didn't you trade with them?

A. Yes sir, but they—

Q. Who did the trading for that land with Bill Johnstone?

A. I did.

Q. You did the paying too, didn't you?

297 A. Yes sir, there was nobody else to do it.

Q. There was no division made out of that check? It was all turned over to Johnstone & Keeler?

A. All but \$10 for me to go home on.

Q. Each time too, wasn't it?

A. Yes sir.

Q. Now, Sam Bob was raised up as a member of your family, wasn't he?

A. Yes sir.

Q. You provided for him?

A. Yes sir.

Q. Bought his clothes?

A. Yes sir.

Q. Sent him to school?

A. As long as he would go.

Q. Fed him?

A. Yes sir.

Q. And his expenses went in with the expenses of the family?

A. Yes sir.

Q. You cultivated this land?

A. Yes sir.

Q. Why did you attempt to take an allotment out of it?

A. Didn't I just explain to you just now.

Q. Why did you?

A. There was more than he could hold, and I thought that if any body took it, I had the right, because I raised him.

Q. Didn't you testify before that you helped to make this place?

A. The Wheeler place?

Q. Didn't you testify that you helped to make it?

A. I hope to put the first house on it.

Q. I will ask you if in answer to this question—"Who made that place?" when you testified in this case on October 9, 1904, you didn't say "Me." "I made it all."

A. No sir, I couldn't say I made it all.

Q. Did you say that before, under oath?

A. No sir, I said I didn't.

Q. Wasn't the question asked you submitted above?

A. What is that?

Q. You wanted to sell *and* 80 acres of land and didn't you say that if you were going to lose your citizenship that you wanted to get something for your life work?

A. That was the 80 acres I sold to McDaniel.

Q. Didn't this extend over on to the McDaniel tract?

A. Yes sir, but I moved it.

Q. Wasn't this after you sold the McDaniel tract when you said that your citizenship was called in question, and you thought you

would sell this and take Sam Bob's land down next to his grandmother?

A. Well sir, I don't know. I don't understand that.

Q. You did agree to take Sam Bob's down next to his grandmother's?

A. Yes.

Q. That was the agreement when you started to the land office?

A. I don't know nothing about that.

Q. Didn't you swear that upon the stand before?

A. No, I didn't.

Q. Will you swear it now?

A. No, for I don't know enough about it to swear.

Q. When you left Sam Bob in Bartlesville to go to the land office in 1904, didn't you agree, and wasn't it agreed between you and Sam Bob that he was to take the south 80 instead of the north 80, and was to be filed upon it?

A. I don't recollect that. I don't recollect going down to
298 the office to file.

Q. Before you went to the Land Office to file wasn't there an agreement between you and Sam Bob and the members of your family that Sam Bob was to be filed on the south 80, and didn't you so swear it two years ago?

A. I have a lot to attend to and if I swore it I don't know it.

Q. Is it true?

A. I don't know.

Q. How can you recollect about those checks of 15 years ago, then.

A. I can recollect about money.

Q. How much was drawn at the first Delaware payment?

A. It has been from \$25 to \$15 and along there.

Q. How much was it at the big payment?

A. Well I don't know. They said it was \$1000 to the head, but when it come it was \$500 one payment and the next \$500 again.

Q. Do you remember the exact amount?

A. No I don't know just exactly.

Q. You don't know whether it was one check or two checks?

A. No I don't know.

Q. You turned it all over to Mr. Johnstone?

A. Yes sir, Mr. Bullett, right here, is the man that give me the check, and he can tell you whether it was one or two.

Q. When you bought this place you bought it from Mr. Johnstone, didn't you?

A. Yes sir, but I didn't buy it for myself, I bought it for the boy.

Q. Didn't you tell him that you wanted to buy it for your wife?

A. I said Sam Bob.

Q. Didn't you say before that part of your wife's money and part of Bob's bought it? Didn't you testify that before?

A. I don't know—as I told you before, I don't remember.

Q. Why did you have your wife's name put in the bill of sale if you didn't buy it for her?

A. If you want to know why I will show you. Because I knew if

I made it into my name and not have the old lady's name to it it would have been nothing lawful, and the way it is now——

Q. The reason you had it made in your wife's name is, as you testified before, part of her money went into it?

A. And another thing—to go to a payment when the old lady's name wasn't signed to it, it was no good unless the one's name that the money belonged to was signed to it.

Q. How much land was in cultivation on this place when you bought it?

A. About 80 or 90 acres.

Q. How much was in cultivation up on the McDaniel 80 at the time you bought it?

A. Well I don't know, there may have been 10 or 15 acres.

Q. How much was in cultivation upon this 80 when you bought it?

A. Which one?

Q. This 80 in controversy?

A. Well there is about 15 now.

Q. When you bought it?

A. Thirty some odd acres.

Q. There was more in cultivation then than there is now?

A. Yes sir.

Q. How much was in cultivation on the 40 immediately south of the east 40 in controversy?

A. That is something I can't get at.

Q. About how much?

A. I don't understand what you mean.

Q. South of the 40 the orchard is on?

299 A. 40 acres.

Q. How much in cultivation down there?

A. 40 acres.

Q. It was all in cultivation then?

A. No not all.

Q. Was the whole 40 acres in cultivation?

A. Yes sir.

Q. How much of the 40 west of there?

A. There was no 40 west of there.

Q. How much in cultivation on the 80 you filed on?

A. There is 40 some odd acres.

Q. Well now, isn't there a road running north and south in this field west of the orchard?

A. Yes sir, north of it.

Q. West of the orchard?

A. No sir, not unless it was made since I left there. There used to be an old road there before Johnstone sold to Wheeler.

Q. Hasn't there been one since?

A. We travelled it, but there wasn't no road. We had to go through gates.

Q. You never bought any of this land from Sam Bob?

A. No.

Q. You didn't have any right to file on it did you?

A. I just claimed that I raised him, and I thought if anybody could get it I would keep it in the family.

Q. Why were you trying to sell it to Mr. Ex-Chief Buffington?

A. Well, here is the why. There was a lot of these schemers got together and thought they would swear me out of it, and I thought the best thing for me to do was to sell it.

Q. What did you do with the money? Did you sell it?

A. Sell which?

Q. That 80 acres to Chief Buffington?

A. This is the 80 right here.

Q. In whose name did you deposit that money in the bank after the land was sold?

A. Supposed to be in my name.

Q. Then it was your land you were selling?

A. No.

Q. You did sell this 80 acres to Mr. Heady for his wife, and gave him a bill of sale, and got \$2700, and put this money in the bank to your credit?

A. Yes sir.

Q. Then you claimed that you had an interest in these improvements didn't you?

A. The only interest I had in it was, I raised the boy, and I thought if anybody had a right to have an interest in it I ought because I raised him.

Q. Why did you happen to sell the north 80 instead of the south 80?

A. Well, because I thought that I had sold Mr. McDaniel one 80 north of it, and I didn't want anyone to get between the family.

Q. So the boy and his grandmother could allot together?

A. Yes sir.

Q. You intended to keep the south 80 for the boy so he and his grandmother could be together?

A. Yes sir.

Q. That was the understanding wasn't it?

A. I don't know that there was any understanding, but that is what I thought.

Q. That is what you told Sam?

A. No.

Q. That is what you told Heady?

A. No, I never saw Heady until he come down there, and I was on my sick bed, and he come in and said "Are you feeling
300 pretty bad"——

Q. Did you know the land you filed on had been filed on by Jesse L. Harnage?

A. My land.

Q. And that he instituted a contest—did you know that?

A. Is that the only one?

Q. Did you know that?

A. Yes sir, I know that, and I know of about 2 more.

Redirect.

Davidson :

Q. Can you read and write?

A. No sir.

Q. Did you ever get back from William Johnstone any part of Sam Bob's money?

A. No sir, not that I know of.

Q. Mr. Hastings spoke about an agreement between you and Sam Bob and your wife. Was Sam Bob of age at that time?

A. No sir, he was about 8 years old.

Q. At the time this agreement is supposed to have been made, was he of age?

A. Yes sir—no sir, he was about 8 years of age.

Q. Your wife is insane, is she not?

A. She is now.

Q. Sam Bob has worked for you on the farm, has he not?

A. No sir, he has never—

Q. He has helped you on the farm?

A. A little, years back, but not since he has been grown.

Q. You have had the rent from this place?

A. Yes sir, to keep his stock.

Q. Wasn't your wife his guardian, under the old Cherokee laws?

A. Yes sir. Before I was.

Q. And then you were appointed?

A. Yes sir.

Q. Have you ever charged up against him his board and clothes?

A. No sir and never intend to.

Q. Did you file for your wife?

A. Yes sir.

Q. Did you file on any part of this old Wheeler place for her?

A. No sir.

Q. Altogether different place?

A. Yes sir, land that I made myself.

Q. For her?

A. Yes sir.

Q. You filed for her on her place?

A. Yes sir, and 70 acres besides.

Recross.

Huckleberry :

Q. Whose money is that there?

A. It was put on the table here for you men.

Q. What is it from?

A. It comes from the Bartlesville bank here.

Q. Who put it in the Bartlesville bank?

A. Mr. Moran and them I guess.

Q. It was put to your credit?

A. Yes sir.

Q. When you got it out to bring here it was to your credit?

A. Yes sir.

301 Q. When you take it back tonight what are you going to do with it?

A. I want you to take it.

Q. Suppose we don't take it, what are you going to do with it?

A. I guess save it, is all I know.

Q. Who is going to save it?

A. The bank I guess.

Q. Is it yours or Sam Bob's money?

A. If they haint no owners for it I will claim it.

Q. Whose money is it—yours or Sam Bob's?

A. The way I look at this thing—

Q. Answer my question? I don't care how you look at it. Whose money is it—yours or Sam Bob's?

A. It is mine until this question is settled.

Q. It is not Sam Bob's then?

A. Mine till Bob's question is settled.

Q. Did you receive it as your money, or as guardian for Sam Bob?

Veasey.—I object to that, for the question calls for conclusions of law.)

A. The way it was put in the bank—it was put to my credit. I don't know whether they received it for Sam Bob or not. That is the way it was put in the bank, and has been in my name since because I am guardian for Sam Bob.

Q. It is Sam Bob's money, and you hold it as guardian?

A. Yes, sir.

Q. Then it is not your money individually?

A. Sam Bob is of age now.

Q. Have you made your final report to the court and been discharged.

A. No sir, I has not.

Q. Have you ever made a report to the court of your guardianship?

A. I don't know.

Q. Have you accounted to the court for this \$2700?

A. No sir.

Q. Do you expect to?

A. If the court expects me to I will of course.

Q. You expect to account for this \$2700 in your last report?

A. If they ask for it I will. It come out of Sam's place, but was put in my name as his guardian.

Q. Are you going to account for that \$2700 when you make your final settlement as guardian of Sam Bob?

A. I said it was in my name until I settled with the Court accounted to the Court for it, and then it is Sam Bob's.

Q. You are going to settle with the court for it?

A. I am if you don't take it.

Q. We have not taken it yet?

A. It is getting mighty close to you.

Q. You are going to settle with the court for that money—account for it?

A. Yes I would rather for him to have it than to throw it away.

Q. Then as guardian for Sam Bob you have that \$2700, haven't you?

A. Yes, sir.

Q. Have you any authority from the court to offer or tender that money as guardian? Have you ever asked the court for such authority to make such tender?

A. That money was never——

Q. Answer it.

A. I will if you give me a chance. The court has never
302 had this money in possession as Sam's money yet, and if I account for this money in Sam's name it is Sam's money.

Q. Have you authority from the Court to pay out this money?

A. I am not going to pay it out unless you take it.

Q. Have you authority from the court to pay it to us?

A. No because the court has not—I had it in my name all the time and to straighten this fuss I thought to return the money to them there would not be no more trouble.

Q. You have no authority from the court then to use this money?

A. No and I am not going to make any use of it unless you take it.

Q. And you have no authority from the court to pay it to us?

A. No, I haven't.

Q. When did you first receive this money?

A. About two years ago I think.

Q. Have you made any report to the court as guardian during the last two years?

A. No, I don't know whether I have or not. I think not.

Q. You have filed no annual report of your transactions for the last two years, as guardian?

A. If I have I have it at home.

Veasey: I will say that he has made a report, and it did not include this \$2700. It is not shown on the inventory, either.

Q. Have you made a report to the Court?

A. I can't tell since I was over to the court house.

Q. Has Mr. Veasey, your attorney, prepared any papers for you, lately in which you stated to the court what you had been doing as guardian?

A. No, not lately.

Q. Within the last two years?

A. Yes, sir.

Q. Did you report to the court that you had received \$2700 in any of these reports?

A. No, sir.

Q. Have you asked any authority from the court or any direction from the court for your actions in the trial of this case?

A. No, sir.

Re-redirect.

Davidson:

Q. Sam Bob is now of age, I believe you said?

A. Yes, sir.

Q. Did you have any authority from the court to sell this land to Ella Heady?

A. No.

Veasey:

Q. Who put the \$2700 to your credit?

A. Mr. Moran.

Q. Who is Mr. Moran?

A. He is an oil man all I can tell you.

Q. Have you spent any of this money?

A. No sir, I have never touched a nickle of it.

Witness excused.

Contestee rests.

303 Mr. Hastings: I want to ask, in the record, if all the testimony heretofore taken in this case is considered as a part of the record in this case, and will be considered in the decision upon this question.

The Commissioner: Do you gentlemen ask that this record shall be transmitted to the Department?

Hastings: The entire record to be considered in connection with the testimony of today?

Davidson: It is to go to the Department in connection with this record made today?

Commissioner: Yes sir, this will be decided by the Department, and not decided in this office. This office will take no action on the testimony at all.

Commissioner: Do you want the whole record to go to the Department?

All Attorneys: Yes.

Veasey: We want the record to show something about this tender.

Commissioner: There is no admission here as to the amount of the tender.

Hastings: We admit that there is \$2700 if Veasey says it is there.

Commissioner: There is tendered in the presence of the Commissioner by the Contestee, \$2700 to the attorneys for Contestant.

Davidson: Which tender was refused.

Veasey: The record ought to show something about it. It is unconditional.

Huckleberry: Which tender was not accepted.

Hastings: And the Contestant moves that the same be taken in charge by the Commissioner pending the final determination of this case.

Commissioner: Commissioner declines to take charge of the tender.

304 Eula Jeanes Branson, being duly sworn, states that, as stenographer to the Commissioner to the Five Civilized Tribes, she reported the proceedings had in the above entitled and numbered cause on the 13th day of April, 1906, and that the above and foregoing is a full and correct transcript of her stenographic notes taken in said cause on said date.

(Signed)

EULA JEANES BRANSON.

Subscribed and sworn to before me this 17th day of April, 1906.

[SEAL.]

EDWARD MERRICK,

Notary Public.

Department of the Interior,
Commissioner to the Five Civilized Tribes.

Cherokee Land Office.

MUSKOGEE, INDIAN TERRITORY, August 13, 1906.

Cherokee Allotment Contest No. 830.

ELLA E. HEADY, by JOSHUA B. HEADY, Her Husband, Contestant,

VS.

SAMUEL BOB, Contestee.

Samuel Bob, the Contestee in the above entitled and numbered cause, appears before the Commissioner on this date in person and asks leave to make the following statement:

SAMUEL BOB, being first duly sworn by W. W. Chappell, a Notary Public, states as follows:

Contestee filed motion to strike from the files the motion for appeal heretofore attempted to be filed herein by Messrs. Veasey & Rowland, for the reasons therein set forth, said motion having been signed by said Contestee in the presence of the Contest Clerk.

Examination.

By Mr. Norwood:

Q. Do you know Frank B. Crostwaite, of Washington?

305 A. No; I don't know him.

Q. Have you at any time, or in any manner, employed him as your attorney?

A. No.

Q. Has any bill for services ever been rendered or furnished you by Frank Crostwaite?

A. No.

Q. Have you ever heard, from any source, that he represented you in any manner?

A. No.

Q. Has he any authority to represent you at Washington or before the Department?

A. No sir.

By J. H. Huckleberry: Contestant also files motion to strike said motion for appeal from the records.

Winifred E. Ayres, being first duly sworn, states that she, as stenographer to the Commissioner to the Five Civilized Tribes, recorded the testimony in the foregoing proceedings, and that the above is a true and correct transcript of her stenographic notes thereof.

(Signed)

WINIFRED E. AYERS.

Subscribed and sworn to before me, this 13th, day of August, 1906.

(Signed)

WINIFRED E. AYRES.

[SEAL.]

Notary Public.

HEADY

vs.

BOB.

A. A. G. 1388-1907.

J. W. H.

Department of the Interior.

WASHINGTON, June 12, 1907.

The Commissioner of Indian Affairs:

SIR: June 6, 1907, the attorneys for the contestant in the Cherokee Allotment contest case entitled Ella E. Heady v. Sam Bob filed a motion for review of departmental decision of May 1, 1907, by which all the land in controversy was awarded to the contestee.

The grounds of error relied upon as set forth in detail in this motion, are numerous, but fall within two classes, it being
306 contended that the Department acted without jurisdiction in rendering its decision of May 7, 1907, and that said decision was erroneous with respect to the merits of the case.

In support of the motion the attorneys for contestant submitted an extensive brief, which was supplemented by oral argument, at which the contestee was represented by attorney. The points presented on review have received careful attention.

The first action taken by the Department in the case was in form of decision rendered October 21, 1905, by my predecessor. It is contended that this decision should not be disturbed, the ground of such contention being that it was final in its nature, and that having been rendered by one Secretary of the Interior it could not be disturbed by his successor.

It further appears that a decision was rendered in the case July

17, 1906, by the Commissioner to the Five Civilized Tribes, from which appeal was not taken within due time or in the regular manner. Because of the defects in the proceedings relating to the appeal from this decision, it is contended that the same became final.

The decision of October 21, 1905, referred to above, was not final, for it did not award to either of the parties any specific tract of land or define the amount to which either was entitled, nor was it final in the sense that in rendering the same the Department exhausted its jurisdiction in the matter.

The jurisdiction of the Department in the administration of the land laws is defined in departmental decision of June 3, 1898 (27 L. D., 1), in the case of Aspen Consolidated Mining Co. v. Williams.

Therein the whole matter was fully discussed; authorities
307 were cited including numerous decisions rendered both by the Supreme Court of the United States and by the Department of the Interior, and the conclusion was reached as follows:

When it clearly appears that in a departmental decision material facts have been overlooked or misstated therein, that evidence has been given consideration which on its face it was not entitled to receive, or that other and prejudicial mistakes have been made, it is the duty of the Secretary of the Interior, whether he is the same person who decided the case originally, or his successor in office, to reopen said case and correct said manifest error, if the government still retains the legal title.

That the power of the Secretary in supervising the various steps by which members of the Five Civilized Tribes acquired title to tribal lands is no less extensive than that vested in him in view of section 463 of the Revised Statutes of the United States, sections 22, 59 and 62 of the Cherokee allotment act of July 1, 1902 (32 Stat. 716), and section 5 of the act of April 26, 1906 (34 Stat., 137). In connection with these acts, see also that portion of the act of March 3, 1905 (33 Stat. 1048, 1060), which reads as follows:

Provided, That the work of completing the unfinished business if any, of the Commission to the Five Civilized Tribes shall devolve upon the Secretary of the Interior, and that all the powers heretofore granted to the said Commission to the Five Civilized Tribes are hereby conferred upon the said secretary on and after the first of July, nineteen hundred and five.

The failure of Sam Bob to perfect an appeal from the decision rendered by the Commissioner to the Five Civilized Tribes July 17, 1906, was due to the fact that he was misled and deceived by others. Acting under the advice of persons who represented themselves to be his friends, but whose interests were not in fact identical with his, he filed a waiver of his right of appeal from said decision, also a confession of judgment in favor of the contestant, together with a stipulation by the terms of which she was to have all the land involved in the contest. These various steps were taken by Sam

308 Bob under circumstances which convince the Department that they should be wholly ignored, and that his rights should be determined upon the merits of the case alone. After being advised of the improper practices which had been resorted to

for the purpose of controlling and influencing Sam Bob, and becoming satisfied that the ordinary regulations were ineffective because of such practices to secure justice in the matter, it became the duty of the Department to proceed, of its own motion, in such manner as it deemed best calculated to reach a just conclusion in the case. Nor was there any bar to such action by the Department in view of supposed finality of said decision of July 17, 1906, for its jurisdiction in the matter did not necessarily terminate at that time, as appears from the authorities cited above.

After further consideration of the case, irrespective of any question of jurisdiction, the Department fails to find that any material feature, either of fact or law, was overlooked in rendering said decision of May 1, 1907. As that decision was rendered by the Department acting within its jurisdiction, and in accordance with law and justice as the same appear in the case, the conclusion then reached will not be disturbed. Accordingly the motion filed for review, June 6, 1907, is hereby denied.

The papers will be returned with a subsequent letter.

Very respectfully,

(Signed)

J. R. GARFIELD, *Secretary.*

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HEADY

vs.

BOB.

I. T.

54581-1907.

Department of the Interior,
Office of Indian Affairs.

WASHINGTON, June 18, 1907.

I hereby certify that a copy of the decision of the Department of June 12, 1907 (A. A. G. 1388-1907), in Cherokee allotment contest No. 830, entitled Ella E. Heady vs. Sam Bob, on motion to review Departmental decision of May 1, 1907, was this day served by registered letter on James K. Jones, Colorado Building; Crosthwaite & Colladay, 1320 E Street, N. W.; Henry W. Blair, 14th and G Streets, N. W., all of Washington, D. C., attorneys for the parties.

• (Signed)

C. F. LARRABEE,
Acting Commissioner.

(Copy.)

I. T.

54851-1907.

Department of the Interior,
Office of Indian Affairs.

WASHINGTON, June 17, 1907.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: A copy of Departmental decision of June 12, 1907 (A. A. G. 1388-1907), in Cherokee allotment contest No. 830, entitled Ella E. Heady vs. Sam Bob, denying the motion filed on June 6, 1907, by contestant, to review Departmental decision of May 1, 1907, is herewith enclosed.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

R. T. B.—S. J.

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HEADY

VS.

BOB.

I. T.

54851-1907.

Department of the Interior,
Office of Indian Affairs,
Washington.Henry W. Blair, Esq., Rooms 808-809, 14th & G Streets N. W.,
Washington, D. C.

SIR: A copy of Departmental decision of June 12, 1907 (A. A. G. 1388-1907), in Cherokee allotment contest No. 830, entitled Ella E. Heady vs. Sam Bob, denying the motion filed on June 6, 1907, by the contestant, to review Departmental decision of May 1, 1907, is herewith enclosed.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

R. T. B.—S. D.

I. T.

54851-1907.

Department of the Interior,
Office of Indian Affairs.

WASHINGTON, June 17, 1907.

Crosthwaite & Colladay, 1320 F Street N. W., Washington, D. C.

GENTLEMEN: A copy of Departmental decision of June 12, 1907 (A. A. G. 1388-1907), in Cherokee allotment contest No. 830, entitled Ella E. Heady vs. Sam Bob, denying the motion filed on June 6, 1907, by the contestant, to review Departmental decision of May 1, 1907, is herewith enclosed.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

R. T. B.—S. D.

311

HEADY
vs.
BOB.

I. T.

54851-1907.

Department of the Interior,
Office of Indian Affairs.

WASHINGTON, June 17, 1907.

James K. Jones, Esq., Colorado Bldg., Washington, D. C.

SIR: A copy of Departmental Decision of June 12, 1907 (A. A. G. 1388-1907), in Cherokee allotment contest No. 830, entitled Ella E. Heady vs. Sam Bob, denying the motion filed on June 6, 1907, by the contestant, to review Departmental decision of May 1, 1907, is herewith enclosed.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

R. T. B.—S. D.

200.

Copy.

Department of the Interior,
Commission to the Five Civilized Tribes.

Contest of Allotment.

ELLA E. HEADY, by JOSHUA B. HEADY, Her Husband, Contestant,
vs.
SAMUEL BOB, a Minor, Contestee.

Complaint.

The contestant, Joshua B. Heady states that Ella E. Heady is 32 years of age and a Delaware Citizen of the Cherokee Nation. That on the 17 day of May, 1904, he made application to the 312 & 313 Commission to the Five Civilized Tribes at the Cherokee Land Office to take in allotment for his wife Ella E. Heady, the S. E/4 of N. W./4 less 3.08 acres K. O. C. & S. R. R. right of way and the S. W./4 of N. W./4 all in Section 13, Township 26 North, Range 12 East, and it appeared of record that on the 5th day of May, 1904, the said tract of land was selected by Wallace Thursday for his ward Samuel Bob.

The contestant further states that said land was inclosed under his fence and was lawfully in his possession as the owner of said land and the improvements thereon when the same was selected for contestee; but neither contestee nor his said guardian have any interest in said land and were not in possession and owned no improvements thereon on May 5, 1904. That contestee is a minor in care of his legal guardian, Wallace Thursday.

Wherefore, contestant prays that Ella E. Heady be permitted to take in allotment the tract of land herein described.

Joshua B. Heady says that he believes the statements contained in the foregoing complaint are true.

(Signed)

JOSHUA B. HEADY.

Witnesses:

Subscribed and sworn to before me this 17th day of May, 1904.

[SEAL.]

(Signed)

SAMUEL FOREMAN,

Notary Public.

Indorsed as follows: Allotment Contest No. 830. Complaint. Ella E. Heady, by Joshua B. Heady, her husband, Contestant, vs. Samuel Bob, a minor, Contestee. Department of the Interior, Commission to the Five Civilized Tribes, Cherokee Land Office. Filed May 17, 1904. Tams Bixy, Chairman.

314

HEADY
vs.
BOB.

Department of the Interior,
Commission to the Five Civilized Tribes,
Cherokee Land Office.

October 8, 1904.

Contest No. 830.

ELLA E. HEADY, by Her Husband, JOSHUA B. HEADY, Contestant,
vs.
SAMUEL BOB, Contestee.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled and numbered cause that the testimony of the witnesses introduced at the trial of this cause shall be reported by a stenographer, and that the transcript of the notes of the stenographer taken at the trial of the cause shall be considered the testimony of such witnesses in this cause, with the same force and effect as if it had been signed by said witness.

(Signed) W. W. HASTINGS, *Attorney for Contestant.*
HUTCHINS, MURPHY & VEASEY,
Attorney for Contestee.

HEADY
vs.
BOB.

J. W. H.
Z. S. 1346—1907.
A. A. G. 1388—1907.

Department of the Interior.

WASHINGTON, May 1, 1907.

The Commissioner of Indian Affairs.

SIR: The Department has considered further the Cherokee allotment case entitled Ella E. Heady v. Samuel Bob, involving
315 the S. E. 4 of the N. W. 4 (less 3.08 acres for railroad right of way), and the S. W. 4 of the N. E. 4 of Sec. 13, T. 26 N., R. 12 E., of the Indian Meridian, including 76.92 acres.

This case was the subject of your office letter of January 19, 1907 (Land 455-1907), with which there was forwarded the report of the Commissioner to the Five Civilized Tribes dated December 22, 1906, together with the papers mentioned therein.

The land in controversy lies south of the town of Bartlesville, Indian Territory, and constitutes a part of a large tract, which, for

about eleven years prior to the date of institution of the contest, was in possession of a family consisting of the contestee, Samuel Bob; his grandmother, Mary Thursday, and his step-grandfather, Wallace Thursday. The latter, who is the husband of Mary Thursday, is a negro and is not entitled to share in the lands of the Cherokee Nation, although he was for a time an applicant for enrollment as a Cherokee by intermarriage. Bob and his grandmother are full blood Delawares. Being a "registered Delaware" she is entitled to one hundred and sixty acres of land, whereas Bob is entitled only to the amount of land which is allowed native-born Cherokees, i. e., land equal in value to one hundred and ten acres of the average allot-able lands of the Cherokee Nation.

The contestant, Ella Heady, is a Delaware woman, having, apparently, a right to select the same number of acres as Samuel Bob. She is represented by her husband, Joshua B. Heady, who is not a Cherokee citizen.

May 5, 1904, Wallace Thursday made application for the land involved in this contest for his minor ward, the said Samuel Bob, and the same was set apart to the latter as a portion of his allotment selection. As this application on behalf of Bob was the first to be made his claim of right depends upon priority of filing
316 and upon ownership of improvements, coupled with possession and occupancy of the land in common with his grandmother.

May 17, 1904 application was made for the land, on behalf of the contestant, by her husband, Joshua B. Heady, but was refused because the tract had theretofore been selected for Bob. Contstant's claim of right is based upon an instrument, executed April 1, 1904, by Wallace Thursday, purporting to convey to her the improvements upon the land in question.

In the contest resulting from these adverse claims there was presented for determination the question, whether Thursday's attempted sale to Heady operated to convey the right of possession to all or any portion of the land involved.

Here it should be borne in mind that, although it was ultimately found advisable to have Thursday appointed as guardian of Sam Bob and Mary Thursday, his appointment to that position was not made until after the alleged sale of April 1, 1904. At that time Bob was a minor and Mary was insane, such having been her condition for many years.

Some reference to the history of the land in controversy is essential to a clear understanding of the rights of the parties in interest. It is part of a tract known as the "Wheeler farm," having been held, prior to 1893, by one Jacob Wheeler. From him it passed to the firm of Johnstone and Keeler, of Bartlesville. The next transfer was made by this firm, by bill of sale dated July 25, 1893, conveying, for \$800, the improvements thereon to Samuel Bob and Mary Anson (or Thursday). This bill forms a part of the record in the case. The consideration for these improvements formed a part of certain payments which were made to Mary and Bob in the distribution of Delaware funds. At the first payment,

317 which was made about the year 1891, there was paid to each \$510. Two years later the second payment was made, each receiving at that time \$490. In each instance the money was paid over to Wallace Thursday, who seems to have used it entirely as he alone saw fit. The funds of these incompetents, amounting to about \$1000 each, were used partly in payment of a store account contracted by Wallace Thursday and partly in payment for the improvements on the "Wheeler farm." It is claimed on behalf of Bob—and the claim is strongly supported by the evidence—that more than three-quarters of the sum paid for the improvements came from his Delaware money.

It is evident that Bob's money, although he was but six years old at the time of the first payment and eight years at the time of the second, was used in part to meet the expenses of the family and in part to provide the home which was enjoyed by it for many years. Consequently the Department finds that, as between Samuel Bob and Mary Thursday, he was the principal party in interest. There is no claim, however, that she is entitled to any portion of the land filed upon by Bob, for her allotment has been selected heretofore from lands lying about one-fourth of a mile to the south thereof, including a portion of the "Wheeler farm" or lands constituting an addition to the same. The respective interests of Bob and Mary, as indicated herein, existed at the time of the alleged sale to Heady. That sale was brought about by Mr. J. L. Moran, a representative of the Test Oil Company, as a step preliminary to obtaining an oil lease on the land involved. For a time Wallace Thursday expected, or at least hoped, that he himself might secure the land as an allotment, but becoming discouraged as to the outcome of his citizenship case, he concluded to dispose of the improvements on the tract, evidently regarding them at the time as his personal property, forgetting, or ignoring, the interest of Bob and 318 Mary therein.

The plan adopted to control the allotment of the land was not new, but was pursued by Mr. Moran in co-operation with one Wallace Burford, who was extensively engaged in transactions relating to Delaware lands, as appears from the records of the Department, the latter's connection with such matters being due, evidently, to the fact that he, too, was the husband of a Delaware. Before the attempted sale to Heady, and on March 29 or 30, 1904, Mr. Moran visited Thursday at his home and offered him \$2700 for his interest in the farm or improvements thereon. Ella Heady's husband, Joshua B. Heady was not present at this meeting, but on April 1 following, he accompanied Moran on a visit to Thursday's place. On this second occasion, Moran was also accompanied by Charlie Julien, a notary public, who was an attorney for the Test Oil Company. They found Wallace Thursday sick in bed. Negotiations were opened with him, in which Moran participated. An agreement was reached that the sale should be made for \$2700, and Moran gave his check for \$300. The balance was to be paid in ten days. Mr. Julien drew up the bill of sale and Thursday signed by mark. The only witnesses were the supposed vendee,

Mr. Heady and Moran. The notary public before whom the instrument was acknowledged was the latter's attorney, Mr. Julian.

The foregoing statements as to the events which occurred April 1, 1903, are received from the testimony of Mr. Heady and his associates and from the bill of sale which is in evidence. As to Thursday he claims that this bill was never read to him, that the witnesses did not sign as such at his place, and that he did not know what he was selling to Mrs. Heady. It also appears from Mr. Heady's testimony that the \$2700 was borrowed from the Test Oil Company, for which he claims he gave his note secured by certain chattel mortgages. This loan was apparently made
319 as an advanced bonus for an oil lease, for the agreement was that Heady's note and securities should be returned after the lease was given.

In this connection Mr. Moran's testimony, appearing on page 23 of the original record, is significant in that it discloses the true nature of the transaction. He testified as follows:

Q. Had you had any conference with Mr. Heady previous to that first trip?

A. Why, yes, Mr. Heady has spoken to me sometime before to get some land to file on.

Q. Did he tell you what he could afford to pay?

A. No; I don't think he did.

Q. Whatever land you were to get for him, the money was to be advanced by your company for that purpose?

A. Yes sir.

Q. And the consideration of his wishes wasn't to depend on that at all?

A. Yes sir.

Q. What limit did you have?

A. We took a free hand.

Q. You could pay as much as you chose?

A. Yes sir, as much as I thought the value of it was.

Q. During all this time you had in mind procuring land for Mr. Heady on which you could get an oil lease to reimburse you for your trouble and expense?

A. Yes sir.

The first decision in this case was rendered by the Commission to the Five Civilized Tribes May 16, 1905, and was in favor of the contestant, based mainly on Thursday's attempted sale. Upon appeal the Indian Office affirmed the decision of the Commission July 22, 1905, basing its decision upon said sale and finding also that the land in contest instead of being the tract referred to in the bill of sale from Johnstone and Keeler to Sam Bob and Mary Thursday was located about six and one-half miles from it. This finding as to the location of the land was a mistake which was subsequently corrected by the Indian Office by telegram, as noted in departmental decision of October 21, 1905, but the general conclusion was allowed to stand.

The matter was carried to the Department by appeal, where a

decision was rendered October 21, 1905, modifying the decision theretofore rendered, and holding, in effect, that the improvements which Thursday attempted to sell to contestant were the property of his wife and stepgrandson; that the sale was invalid in so far as Bob's interest was concerned, but that Thursday, as husband of Mary Thursday, was authorized, not only to select an allotment for her, but also to surrender, as to her, the right of possession to the farm when he made the bill of sale April 1, 1904. The conclusion followed that "contestant is entitled to what would have been Mary Thursday's portion of the land." Accordingly a hearing was authorized "to determine how an equitable division of the land" might be made between the contestant and the contestee.

A motion for review of this decision was denied March 3, 1906, and the hearing theretofore authorized was had April 13, 1906. The additional testimony was forwarded through the Indian Office, but without recommendation. Thereupon the matter was again referred to the office of the Commissioner to the Five Civilized Tribes, through your office, with the statement that: "It was contemplated, of course, the case should be readjusted by the Commissioner to the Five Civilized Tribes and your office."

So instructed, the Commissioner to the Five Civilized Tribes rendered a decision awarding to Sam Bob, approximately, one-half of the land, in the form of two tracts of twenty acres each, i. e., the north half of the east forty acres and the south half of the west forty acres, thereof, on condition, however, that Bob should pay Mrs. Heady \$1,350, that being one-half of the sum which was paid by her, or on her behalf, to Wallace Thursday under the sale of April 1, 1904.

The remaining twenty acre tracts were awarded to the contestant.

This decision was rendered July 17, 1906, but notice thereof was not served upon the parties until the afternoon of the next day. In the forenoon of the latter day, viz: July 18, 1906, Samuel

321 Bob, then a little past twenty-one years of age, appeared before the Commissioner to the Five Civilized Tribes and confessed judgment in favor of the contestant. After receiving notice of said decision, and in the afternoon of July 18, 1906, Bob filed an application to waive his right of appeal. Later he became a party to a stipulation under which contestant was to be allowed to take the whole of the land as her allotment without return to her of any part of the original sum paid to Thursday for the improvements.

August 9, 1906, the Indian Office made further report in the case, recommending that the Commissioner to the Five Civilized Tribes be directed to approve the stipulation and contestee's waiver of his right of appeal and to award the land to the contestant.

The department found it advisable, however, to cause further investigation to be made. Accordingly, a hearing was ordered, September 29, 1906, to determine, among other things, what influence, if any, had been brought to bear upon the matter by certain oil companies and their attorneys.

Reporting finally, December 22, 1906, the Commissioner to the Five Civilized Tribes furnished considerable information concerning the subjects investigated at the last hearing, but adhered to his said decision of July 17, 1906. In this last report your office concurred, January 19, 1907, in letter of recommendation referred to above.

In the light of the complete record, it is now evident that the peculiar course which Samuel Bob has pursued in respect to the valuable property in which he is interested can not be explained upon any theory of intelligent self-interest, but is due to the fact that two oil companies have endeavored to control or determine his action, without nice regard to the means employed, for the purpose of securing an oil lease covering both the land involved and the eighty acre tract adjoining it on the south. The latter tract
322 also formed a part of the farm of which the Wheeler place was the nucleus. Applications to select it have been made by Jesse L. Harnage and Annie M. Martin. Harnage was the first of the two to apply for this tract, which is known as the "south eighty" but Mrs. Martin, who is the full sister of Samuel Bob, has filed contest to secure it. The testimony shows that the Delokee Gas and Oil Company attempted to secure leases upon both of these tracts, its plan being to secure the former tract as the allotment of Samuel Bob, and the latter as the allotment of the said Harnage. The Test Oil Company has endeavored to secure a lease upon the north eighty, basing its operations upon the arrangement, heretofore explained, made by its representatives, Mr. Moran, with Joshua B. Heady on behalf of his wife, Ella Heady, contestant herein. (See testimony of Moran quoted above.) Obviously the success of Sam Bob in this contest would not inure to the benefit of the Test Oil Company, so far as the north eighty is concerned. On the other hand, the negotiations of said company with Samuel Bob, and his sister, Annie M. Martin, have been such as to render it probable that, in the event of either of them selecting the south eighty for an allotment, it would be able to secure an oil lease thereon from the one to whom it might be allotted. The conclusion seems to have been accepted that, of the two, Bob would be more likely to succeed in a contest against Harnage. Accordingly, the Test Oil Company attempted to induce Bob to abandon the north eighty and to select the south eighty, holding out the promise of a valuable bonus.

An effort was made through an attorney named Norwood to secure the result desired by this company. The course pursued is described fully by Commissioner Bixby, on pages 17, 18, 19 and 20 of his report of December 22, 1906, from which it appears that

323 Norwood ingratiated himself into the good will of Bob by professing an interest in Indians and an old-time acquaintance; that he volunteered to furnish his services to Bob for nothing, and that he succeeded in inducing the latter to dismiss his former attorneys and appoint him (Norwood) as his sole and only attorney. It also appears that Norwood offered certain Delawares, who had known Bob for years, \$100 to persuade him not to act in

the matter; that unwarranted and misleading statements were used for this purpose, and that other improper practices were employed to control the boy. It further appears that through Norwood's influence, with whom were associated Moran and Julien, of the Test Oil Company, Bob was induced to file the "confession of judgment" and the "stipulation" referred to above. In so doing he was undoubtedly led to think that he was acting solely under the advice of disinterested friends.

The Test Oil Company seems not to have — alone in the effort to secure control of Bob through questionable methods, for it appears from the evidence that he was induced to take a trip with one L. T. Harned, representative and stockholder of the Delokee Gas and Oil Company, to Oklahoma City and to various towns in Texas, continuing for about one month prior to the time when he became of age, viz: March 4, 1906. About that time Bob and his companion were met at Oklahoma City by Attorney Veasey, of the firm of Veasey and Rowland, and on the day after he reached his majority Bob was induced to sign a lease in favor of the Delokee Gas and Oil Company, although he was away from home and deprived of the advice and council of friends. Such a course operated manifestly to the disadvantage of Bob by relieving the company from competition in securing its prospective lease.

The next trip was taken by Bob in company with one Cy Johnson, alleged to be a gambler by profession, and according to Mr. 324 Bixby's report "a paid representative of the Test Oil Company." This trip commenced a few days after Bob's "confession of judgment," in July 1906, and lasted about four weeks, including various towns in Texas, Kansas, Missouri, New York, and Washington D. C. During a portion of this trip the Delaware boy was also accompanied by Norwood and Moran.

The third trip began in the latter part of August, 1906, following the execution by Bob, on the 22nd of that month, of a petition in which he repudiated his "confession of judgment" and reinstated his former attorneys. This trip continued until some time in September, following, and extended for many miles throughout the West, during which he was accompanied by one Bal Thompson and Fide Martin, who traveled with him in the interest of the Delokee Gas and Oil Company.

Bob was induced to take these trips for the purpose of keeping him away from the "other people." No violence was used, but his course manifestly resulted from undue influence and was evidently contrary to his inclination at times, although he seems to have been easily led. Of course, his interests were not treated as of first importance.

Concerning Bob, Commissioner Bixby says:

Samuel Bob is not a person of weak mind, but he is a full blood Indian, who has but recently attained his majority. It appears to me that he is at least no more intelligent than the ordinary full Indian, and from this fact and from the fact of his youth, is peculiarly susceptible to the influence of other persons. It seems to be conclusively demonstrated by the sudden changes of attitude which

have been taken by Bob during the progress of this controversy and especially since July 1, 1906, that he is a person whose own will can practically be moulded and controlled by other persons who have an interest in doing so.

In view of the influences which have been brought to bear upon Bob, the Department must ignore his so-called confession of judgment and the stipulations which he signed in favor of contestant, and determine his case according to his best interests only, as his rights may appear.

325 Inasmuch as an allotment has been selected for Mary Thursday elsewhere, there is no outstanding claim adverse to Bob, unless Thursday's attempted sale of April 1, 1904 was effective to convey her interest, if any, in the improvements on the old Wheeler farm.

Aside from any objection which may attach to Thursday's attempted conveyance by reason of the circumstances connected with the execution of the bill of sale, it is undeniably a fact that at the time thereof none of the parties who were present, or who participated in the transaction, neither he who was supposed to sell nor they who attempted to buy, pretended or even supposed that the ignorant old negro was acting as the agent or representative of either Mary Thursday or Samuel Bob. Furthermore, in the bill of sale, which was evidently drawn up by the attorney for the Test Oil Company, Thursday covenanted:

"That I am the lawful owner of the above described goods and chattels; that I have a good right to sell the same." In short, he entered the transaction in order to realize, for himself only, all that could be obtained for the improvements, and, while it has not been shown, nor is it conceded, that husbands are authorized in the Cherokee Nation to select allotments for their wives, it is clear that his action was in no respect taken as a necessary step incident to the selection of an allotment for her.

After further consideration, the Department concludes that its decision of October 21, 1905, recognizing Thursday's attempted sale of his wife's improvements, was erroneous and contrary to the position taken in the decision of November 17, 1906, in the Cherokee case of *Kerr v. Shell*, the principal difference between that case and the one now under consideration being that there is less excuse in the latter than in the former for invoking the doctrine of the

326 husband's agency. In *Kerr v. Shell* considerable testimony was presented at the original hearing that the alleged vendor was acting on behalf of his wife, but here the record was made up and submitted to the Commission to the Five Civilized Tribes upon the supposition that the vendor was acting wholly in his own behalf. Thursday's wife was insane, and there is no ground for finding he was authorized to dispose of her improvements. Moreover, it is perfectly clear that irrespective of the legal right of the husband to act for the wife, it should be shown first that he attempted in fact to act for her. This has not been done. The Cherokee allotment act of July 1, 1902 (32 Stat., 716), does not, either directly or by implication, warrant the conclusion that the mere relationship of husband and wife vested Thursday with the necessary power or

agency to make the sale. Therefore the former decision is rescinded as to the sale of Mrs. Thursday's interest in the improvements.

That such action may be taken at any time prior to a final determination of the rights of the parties as may be necessary for the preservation of both legal and equitable rights is well established. The decision of October 21, 1905, was not final. Based as it was upon testimony tending to show that the major portion of the money which was used in the purchase of the Wheeler improvements was taken from the funds of Samuel Bob, it must have been apparent to all concerned that "the equitable division" called for might result in little or nothing being apportioned to the contestant, even if Thursday's sale had been valid. Besides this, all parties were warned by departmental decision of March 3, 1906, that it was contemplated by the Department, in remanding the case, that it should be "readjudicated" by your office and by the Commission to the Five Civilized Tribes. Not only is this true, but in departmental letter of September 29, 1906, wherein the last instructions for further investigations were given, the Commission to the Five Civilized Tribes was advised in part as follows:

The Department does not desire to confine the examination directed herein to the points above indicated, but directs that a thorough and complete investigation be made by you of all the charges and countercharges made, in order to bring out all the facts and circumstances attending the execution of any leases made by Samuel Bob, his confession of judgment and waiver of right to appeal, and to preserve and protect whatever rights he may have to the lands in controversy.

In the face of instructions such as the above issued from time to time, no person interested in this case, whether directly or indirectly, has been warranted in the expenditure of money or in making calculations based upon the decision of October 31, 1905. In addition it must be said that, if the error now corrected be allowed to stand, the result will be to throw upon Bob a loss for which he is in no way to blame—a thing which the Department would not be justified in doing under the circumstances.

The condition imposed by the decision of the Commissioner to the Five Civilized Tribes, rendered July 17, 1905, that Bob be required to pay the contestant \$1350, i. e., one-half of the sum originally paid to Wallace Thursday on her behalf, presupposes that said sum is in Bob's possession or under his control. It follows that if he cannot or will not accept the terms of said decision, the Thursday sale will become absolutely effective, as to the whole tract, in spite of all that has been said, not through the consent of either party in interest, but wholly through the exercise of departmental authority. In this connection it is observed that the Commissioner's report of December 22, 1906, shows that "no portion of the sum of \$2700 has been paid to, credited to, or used by Samuel Bob for his benefit," unless it may be inferred from the fact that on two occasions during the progress of the contest he endeavored to have the money returned to the contestant. The sum was originally deposited in

328 bank, when received from the Test Oil Company, in the individual name of Wallace Thursday. Since then it has been deposited in one bank or another, "and there still remains (Dec. 22, 1906) to Thursday's credit in the Bartlesville National Bank the sum of \$2170." The following is also found in Mr. Bixby's report:

It appears that Wallace Thursday has been discharged of the guardianship of Samuel Bob without accounting for any of this \$2700, and that he has, since the last tender of the money, appropriated about \$530 to his own use or to the general use of the family.

Thus, it appears that Thursday, if any one, is responsible for the return of the \$2700, that Bob should not be called upon to insure the return of all or any part of it to secure his allotment rights.

The Department therefore reverses the decision heretofore rendered in so far as the rights of contestant are affected, and awards all of the land in controversy to the contestee.

The papers in this case are returned herewith.

Very respectfully,

J. R. GARFIELD, *Secretary*.

23 Inclosures.

Department of the Interior.

Commissioner to the Five Civilized Tribes.

Cherokee Land Office.

MUSKOGEE, INDIAN TERRITORY, August 13, 1906.

Cherokee Allotment Contest No. 830.

ELLA E. HEADY by JOSHUA B. HEADY, Her Husband, Contestant,
VS.

329 SAMUEL BOB, Contestee.

Samuel Bob, the Contestee in the above entitled and numbered cause, appears before the Commissioner on this date in person and asks leave to make the following statement:

SAMUEL BOB, being first duly sworn by W. W. Chappell, a Notary Public, states as follows:

Examination.

By Mr. Norwood:

Q. Do you know Frank B. Crostwaite, of Washington?

A. No; I don't know him.

Q. Have you at any time, or in any manner, employed him as your attorney?

A. No.

Q. Has any bill for services ever been rendered or furnished you by Frank Croswaite?

A. No.

Q. Have you ever heard, from any source, that he represented you in any manner?

A. No.

Q. Has he any authority to represent you at Washington or before the Department?

A. No, sir.

By J. H. Huckleberry: Contestant also files motion to strike said motion for appeal from the records.

Winifred E. Ayers, being first duly sworn, states that she, as stenographer to the Commissioner to the Five Civilized Tribes, recorded the testimony in the foregoing proceedings, and that the above is a true and correct transcript of her stenographic notes thereof.

(Signed)

WINIFRED E. AYERS.

Subscribed and sworn to before me this 13th day of August, 1906.

(Signed)

WALTER W. CHAPPELL,

[SEAL.]

Notary Public.

Department of the Interior.

Commissioner to the Five Civilized Tribes.

330

MUSKOGEE, INDIAN TERRITORY, October 24, 1906.

Testimony of Wallace Thursday in the matter of the investigation in Cherokee Allotment Contest No. 830, entitled Heady vs. Bob, ordered by the Department in letter of September 29, 1906.

Commissioner Bixby personally present.

WALLACE THURSDAY, being first duly sworn, testified as follows:

By Mr. Rodgers:

Q. Your name is Wallace Thursday?

A. Yes sir.

Q. How old are you Wallace?

A. Going on 56 now.

Q. What is your post office address?

A. Bartlesville.

Q. Are you the husband of Mary Thursday?

A. Yes sir.

Q. Are you acquainted with Samuel Bob?

A. Yes sir, I raised him from a baby.

Q. He is the grandson of Mary Thursday?

A. Yes sir.

Q. How old is Sam Bob at the present time, do you know?

A. He is 21 years old.

Q. When was he 21?

A. Last March; 4th day of March.

Q. You raised Sam Bob, did you?

A. Yes sir.

Q. Is he living with you at the present time?

A. No sir, he did live with me, but he went off.

Q. When did he leave you?

A. It has been about 2 months ago, now.

Q. Had he lived with you up to that time, up to 2 months ago?

A. Yes sir.

Q. Where did he go, do you know?

A. He said he was going to Oklahoma City on a visit. That's what he told me; he had been there three times before that and I just allowed that he was going there on a visit. He come in about midnight from a dance and come into the house; I was in bed but I heard him moving around, and the first thing I know he had the lamp lit; I thought he was going to bed, and I says "What are you going to do, Sam," and he said, "I am going to Oklahoma City" I says "Who are you going with" and he said "Harnard and S. Johnson." I says "How long are you going to be gone?" He says "I am going to be gone three days." I said "Have you got any money?" He said "I have got a little; give me \$5.00." I got up out of bed and got it out of my pocket and give it to him.

Q. You gave him \$5.00?

A. Yes sir. And he said "Good night" and went out; after he had gone a while I laid down on the bed and I got curious and I just got up to see what time of night it was, and it was just after 12 o'clock. After that I was resting easy about him for the next three days because he is a boy if he says anything he tried to do it. Three days pretty near passed and then Norwood come down. And he
331 said "I heard your boy is gone." He says, "Give me my papers back and I will go."

Q. Have you seen Sam Bob since he left you that night about two months ago?

A. No sir.

Q. Have you heard from him?

A. I heard from him lately; I got a letter from him when he was gone about three weeks.

Q. Where was that letter sent from?

A. Denver city.

Q. Denver, Colorado?

A. Yes sir.

Q. What did he tell you?

A. Why he said he was getting along pretty well and he seen a heap of things out there where he was he never did see.

Q. Did he tell you how he happened to be in Denver, Colorado?

A. No sir, he didn't say anything about that.

Q. Did he tell you who he was with?

A. Yes sir, he named Fide Martin and Ball Thompson. I got two letters from him in one week. First letter appeared like he was doing pretty well and the next letter appeared like something was wrong. I thought there was some change or something in his business out there. The first one he was having a good time and the

next one it appeared that he wasn't doing so well.

Witness produces two letters from Samuel Bob, dated at Denver, Colorado, September 1 and 3, 1906 copies of the same are attached hereto and made a part of the record.

DENVER, COLORADO, Sep. 3, 1906.

Mr. Thursday I am giting along pertty Nice well when do you think I Better come home I thought about 10 Days from Now I may Come I cam very Neare Runing on heady at Colorado springs. Well What are those partys doying you Well are the Deulikee starting that house as they agreed to Do. say you tell Mr. Jim Gray to come out here if he Don't Come I am Coming home if they want me to stay out here Martin wants to come hom so Bad he cannot stand it No longer he says. Me and Ball would like for Mr. Gray to Come as quick as he can Come saturday we went to Colby Kansas, and stayed there till Munday and we came Back to Denver agin and I liek it out here very nice Climate is Affel Nice out here and to Day there are a great Celebration Day all Kind of amusements goying on here. Well when Was the last Dance you all had ove there since I have gone and I have gained five or six pounds since I have Bin out here and it pretty healthy out here I and Ball have Bin taking all the parks in. and we are certainly are having a splendid time. well Jim what is the little gambler Doying Now

Well I don't No any more tell in this letter

Well I will Close my letter for this tim

Written By

MR. SAM BOB.

Envelope accompanies this letter postmark Denver, Colo.

DENVER, COLO., Sep. 1, 1906.

Mr. Wallace Thursday I am Getting along finest and hoping you are Doying the same

Well we leav here this evening to Wyoming and stay there to weeks and we are coming home Maby if nothing happenes I think

332 Denver is a Nice place and here are sevl parks here and and everything goying on eve Day and me and Ball had our picheres paken last Night.

and did have a finest time I evr had in my life and Don't show this picture to ane one

Well I will close my letter for this time

I no ane more for this time

By MR. SAM BOB.

Envelope accompanies this letter postmark Denver, Colo.

Q. You think that this time when Sam Bob came home about 12 o'clock and told you that he was going to Oklahoma City was about two months ago, was it?

A. It was two months ago, yes sir.

Q. Did you see him again until you got these letters from Denver?

A. I did hear a couple of days before; I had a scythe that belonged to a man that lived close to me and I took it home one morning and I was talking to him and he said, "We got a card from Sam Bob."

Q. This man told you that he had heard from Sam Bob?

A. Yes sir.

Q. Who was the man?

A. It was a man lived right close by me named Smith.

Q. But you didn't hear directly from Sam Bob until you got these letters from Denver?

A. No sir; that is the only time personally.

Q. Who is this person referred to in the letters as Ball?

A. Ball Thompson.

Q. Who is Ball Thompson?

A. He is a nephew of Gray's one of them oil men.

Q. Is Ball Thompson a white man?

A. Yes sir; renter on the place where the boy expects to take his allotment.

Q. Who is Martin referred to in this letter?

A. He is the cousin of the man Thompson.

Q. What is his full name?

A. Fide Martin.

Q. Who is Jim Gray?

A. That is the boss of the oil men I reckon. He acts in that way.

Q. When did you next hear from Sam Bob after you got these letters from Denver?

A. Over to the court.

Q. Over at what court?

A. United States Court at Vinita.

Q. When was this that you went to the court?

A. 15th I think of last month—this month.

Q. 15th of October?

A. Yes sir.

Q. That was the time that you went to the court with Mr. Davenport? When you went before Judge Parker in Vinita?

A. Yes sir, but it wasn't on that business.

Q. What did you hear about Sam Bob then?

A. Why we had them men subpoenaed and brought before Judge Parker to get to find out where he was.

Q. Have you been trying to find Sam Bob since you heard from him in Denver?

A. Yes sir, cost me a lot of money too.

Q. You couldn't locate him at all could you until you went to the court?

A. No sir.

Q. What did you do to try to locate him? How did you go about it, where did you go?

A. I couldn't go anywhere; I am confined at home; my woman is always sick.

Q. Who did you send or what did you do?

A. I sent a lawyer out to hunt him?

Q. Who did you send out?

A. Mr. O. B. Cleavenger.

Q. You stated, Wallace, that Bob came in that night before he went to Oklahoma City from a dance; where had this dance been held?

333 A. Right close to my house, about a couple of hundred yards.

Q. Is there a dancing platform there?

A. There was but there ain't now; I bought it and tore it down.

Q. Is this dancing platform erected on this land that Sam Bob went on?

A. No sir, it is on the old lady's part.

Q. Who built that platform?

A. Sam and that man I told you about named Smith.

Q. What is Smith's full name?

A. That is all I know.

Q. Is he a farmer near you?

A. Yes sir, he lives close to me on the northeast side.

Q. Who furnished the money to get the lumber with?

A. I don't know. I bought Smith's part out; I suppose Sam bought the lumber half of it and he bought the other half. I don't know anything about it.

Q. Did Sam Bob and this man Smith build it themselves?

A. Why, the men done the biggest part; Sam may have worked on it a few hours I don't know.

Q. Do you know anything about anyone else helping Bob to build this dancing platform?

A. There was another man but I don't know his name. Stranger come in there about a week.

Q. When Sam come into the house that night was he drunk or had he been drinking?

A. I couldn't tell you; I was in bed when he came in; I just got up and got him the money and laid down again. But Smith said he was drinking around there with the boys but he couldn't tell what they was drinking.

Q. Smith told you that he had been drinking that night before he started to Oklahoma?

A. Yes sir, he came from the platform right to the house. But he didn't know what they were drinking.

Q. Is Sam a boy that drinks very much?

A. No sir, he don't drink; if a person coaxes him he will take a drink once in a while.

Q. He is not a man that drinks to excess?

A. No sir, never saw him drunk but twice in my life; lots of boys that gets with boys that drink——

Q. Do you know of anybody giving Sam any whiskey recently during the last six months and getting him drunk?

A. No I have not; something I don't use myself and I try to lead him to not do it.

Q. Do you remember, Wallace, of signing a letter in Bartlesville

on August 23 of this year addressed to the Indian Agent in which you made some complaint about the way these people had treated Sam Bob?

A. Yes sir.

Q. Did you ever see that? (Showing witness letter addressed to Indian Agent dated Bartlesville, August 23, 1906, signed by Wallace Thursday.)

A. I can't read.

Q. Do you recognize the looks of that paper at all?

A. Why I recollect signing some papers, sending them to the Agent from what I heard.

Q. Who was with you when you signed that paper?

A. A lawyer in Bartlesville named George.

Q. Did you go into the bank there and have it signed?

A. Yes sir.

Q. Who was standing in the bank, do you know?

A. I don't recollect who was in there; several men in there.

Q. Do you know a man named R. L. Battie?

A. No sir, I don't know him personally; I might know his face if I see him.

Q. Do you know a man named J. L. McCoy?

A. Yes sir.

Q. Was he there when you signed that paper?

A. Yes sir.

Q. Who fixed up that paper for you?

A. Fellow named—George's partner; I forget the man's name.

334 Q. Would you know the name if you heard it?

A. Yes sir.

Q. Was it Julian?

A. Yes sir.

Q. Did you tell Mr. Julien what to put in that paper?

A. No sir, I didn't tell him what to put in; I told him I wanted him to write a letter to the Agent how they was using Sam.

Q. Did Mr. Julien read the letter to you after he had finished it?

A. I think he did.

Q. You state in that letter Thursday that these oil people built a dancing platform on the farm for Bob; do you know whether that is true or not?

A. That is not true; it is on my wife's land.

Q. Do you know who built it?

A. Yes sir, I know who built it.

Q. Did these oil people have anything to do with it?

A. No sir, I don't think they did. They might, I don't know.

Q. Did you ever hear Bob say as to whether anyone had helped him in getting that built?

A. I think that him and that Smith bought it in partnership as much as I know about it.

Q. He didn't say anything about these oil men having helped him did he?

A. No sir, he didn't say anything to me about them.

Q. You also stated in this letter these oil people sent a man to Caney Kansas to get whiskey and they got Sam drunk?

A. No sir, I heard of it, but I didn't have nothing to do with it. I got nothing in that paper personally only what I heard. I couldn't state it to the Agent because I know nothing but what I heard.

Q. Who told you that they had gotten Sam drunk?

A. Why it was a good many people; I couldn't tell you from one to another; I heard it all around.

Q. Do you know anything Wallace about anybody having built a house on Sam Bob's land?

A. Yes sir, this here Gray promised he would build a house on it.

Q. This Jin Gray you referred to before?

A. Yes sir.

Q. Did they ever build that house?

A. No sir; only wanted to get him off was all.

Q. Only wanted to get who off?

A. Sam Bob.

Q. Wanted to get him away from the country?

A. Yes sir.

Q. They had never built that house.

A. No sir, never was started. Just wanted to get him out of the way was all. That is what the letter states; he asked me what was Jin doing about that house. That is only what I knew by that is what he says in the letter.

Q. His reference in the letter about that house is about the house that he was going to build on that land?

A. Yes sir.

Q. Do you know Wallace at any time of any of these oil men having given Sam any whiskey or getting him drunk?

A. I never seen him drunk but twice.

Q. Is that since he has become of age since he was 21?

A. No, that was before he was of age I saw him drunk.

Q. Do you know where he got that whiskey?

A. He was up there in Parsons. He had money and could buy it himself. I guess it was whiskey, I don't know.

Q. Did you go to Mr. Julian and ask him to write this letter for you and did he come to you and get you to write it?

A. Why when Sam was still off Norwood left word by Mr. Julian that if I wanted anything done to go to Mr. Julian and he would do it.

Q. And then you went to Mr. Julian and had this letter prepared?

A. Yes sir, I didn't know how it was made. I couldn't put anything that I knew in it because I knew nothing.

335 By Mr. Bixby:

Q. Do you know an oil man by the name of Harnard?

A. Yes sir.

Q. Do you know his first name?

A. No I don't.

Q. Is he an oil man?

A. He was; he claims now he ain't.

Q. Do you know what company he worked for?

A. He belonged to a company.

Q. What company was it?

A. Delokee; he claims now he didn't belong to any company.

Q. Where does he live?

A. In Coffeyville.

Q. What is his business in Coffeyville?

A. I don't know.

Q. Do you know whether he has a bank there or not?

A. I don't know, sir, whether he has or not. First I knew him he come down there on the oil field he was the one that promised to pay for the oil field but he never paid me nothing.

By Mr. Rogers:

Q. Wallace, you gave me a while ago a letter signed by Sam Bob which seems to be dated Washington, D. C., August 6, 1906, did you get any letters from Sam at Washington?

A. No sir. I never had sich a letter as that I don't think.

Q. Do you know anything about Sam having been to Washington?

A. Yes sir, I know about that.

Q. You got a letter from him while he was there, did you?

A. Yes sir, I got letters the whole route he went. I knew every town he come to.

The letter above referred to is copied in the record and will be made a part thereof.

Washington, Dc 8/6 1906.

Well Wallace I am at Washington to Day I am on that same old Business And at least I think We May get Throught with it to Morrow. sometimes and if the party Do Make it all Right I will Be so glad and when we get through we are goying Down to little Rock and to forts Smith and to forts Gibson and from there we are Coming Home and we had a Bad storm this evening about five oClock and a heavy Rain With It and at Buffalo New York it so survious cold up there and Down here it is little Cold and and Nice here here is the place for aneone to See those Big guns and harbers and Vesels and Many Other things I am Pretty Clost to Atlantic Ocean and all Kind of fruit and vegeatables and all Kind of plants.

Well I will Close my letter for this time.

Written by Mr. SAM BOB.

Q. Where did he go on that trip?

A. He went to Washington.

Q. What other cities?

A. First he went down in Texas and around and then went to Washington.

Q. Who did he go with on that trip?

A. Norwood and Si Johnson.

Q. How did he happen to take that trip, do you know?

A. Well, now, this change of this land business which they have

now on notation, we come down, we heard that the Commissioner said that Sam could file on the low 80 and could get \$5000 and file on the low 80; that was told to me.

Q. Who told you that?

A. Couple of Delaware men.

Q. Who were they?

A. William McHughie and Jim Shawl. And I told them "You see I can't do anything with that now; the boy is of age, and he is not at home, and I couldn't answer you." If you see the boy and come back then I will tell you what I think about it. "Well, 336 they said the boy was too far off. I seen them on the 4th of July.

Q. Where was the boy on the 4th of July?

A. On a picnic.

Q. Then when the boy came back from the picnic did you tell him.

A. Yes sir.

Q. How did he happen to go away with Norwood and Si Johnson; did they come and get him?

A. No, sir, they didn't have the business fixed up yet. They was just starting to get him. In two or three days or a week Si Johnson come down and said that they failed to see him; that they had a heap of trouble about his place and he could get a chance to file on the low 80 next to his grandmother and stop all this expense. And I thought it myself; he would be a lot of trouble and wouldn't get anything out of it.

Q. Did you talk that over with Sam Bob?

A. Yes sir.

Q. Did you tell him that you thought it would be well for him to take the south 80?

A. Yes sir.

Q. Do you know anything about Sam Bob coming here to Muskogee in July in order to fix that matter up?

A. Yes sir. That is the time he come from Washington; I heard that he come down, I don't know.

Q. Along in July soon after the 4th when you said you were talking with him did you know about him coming down here to Muskogee?

A. If he come down I was with him.

Q. You come down with him at that time?

A. Yes sir, that was the time I told you at the table right over there that what we heard.

Q. At any time when Sam Bob come down here with you was he perfectly willing to give that land up and take the south 80?

A. Yes sir, because it was cut in a shape that he couldn't fence it.

Q. You two had talked the matter over between you thoroughly had you?

A. Yes sir.

Q. You are familiar are you with the way that the Commissioner in his last decision awarded the land to the parties in that contest case, are you?

A. Well, I hasn't heard; I asked just now if I could understand; I heard that somebody else has filed on the land since we was down here.

Q. When you were down here in July you and Sam understood perfectly well just how the land was divided did you?

A. Yes sir. It was in a shape that made it unhandy for him to fence his 20 and the other one their 20. If it had been split right in the center then it would have been some reason; never said anything about the 40 on the other side.

Q. Wallace, at the time you and Bob were down here Bob was willing to take the south 80 and give up the north 80, was he?

A. Yes sir.

Q. He knew perfectly well what he was doing?

A. Yes sir.

Q. Did you know he filed a confession of judgment here with this office stating that he wanted to get out of the contest with Heady?

A. Yes sir.

Q. Bob knew what that meant when he filed that paper, did he?

A. Yes sir.

Q. Wallace, how much money did you get from Heady for the sale of that north 80? When you first sold it to him?

A. \$2700, I think.

Q. What did you do with that money?

A. I have got every penny of it yet.

Q. Have you got it in a bank?

A. Yes sir.

337 Q. In what bank have you got it?

A. In Johnson's bank.

Q. In Bartlesville?

A. Yes sir.

Q. Never touched that money at all have you?

A. No sir, only in bringing it down here and taking it back home.

Q. Who do you consider that money belongs to?

A. Why it belongs to the family.

Q. When you first sold that land who did you think you were selling that for, for yourself, or Mary Thursday, or Sam Bob?

A. Why, the way they said it to me that I couldn't hold it and it was my wife's surplus and we either had to lose one 80 or do something with it; I wanted to sell the 80 next to town and keep the field next to the old lady, and have the whole thing concealed together. That was my object in selling that.

Q. Did you intend first when you sold that to Heady for \$2700 to sell the whole north 80 to him?

A. Why, I wa-n-t selling no land. I can't sell the land.

Q. Well you were intending to sell the improvements or the right to file on that north 80?

A. Yes sir, I wasn't selling the land at all; never did expect to sell the land; I can't do it.

Q. You intended to give Heady whatever rights you had and your family in the north 80, was that your idea?

A. Yes sir, that was my idea.

Q. Did you just now state that you intended first to have Sam Bob take the 80 right on the south of this north 80?

A. Well, I told you that is taking me too far; if he agrees to that, I don't know how they have got him now.

Q. I am not talking about *when* you want to do now; what did you intend to do at the time you sold the land; you intended at that time to file Bob on the south 80, dispose of this north 80 and put your wife on the 160 below both of these pieces?

A. Yes sir, file Sam on the north 80 of the 160.

Q. On the 80 right north of the 160?

A. Yes sir.

Q. Wallace, who do you consider that \$2700 belonged to at the time you got it from Heady?

A. Why I told you just what I thought. I thought it was the family's money.

Q. Did you consider that this whole piece those two 80's and the 160 belonged to the whole family—that is the improvement on it?

A. That it was the family place?

A. Yes sir.

Q. That was your idea?

A. Yes sir.

Q. That after the family completed their filings whatever you had over and above to complete the filings you would dispose of and what you got would belong to the family?

A. Only Sam filed his filing here before he become a man of his own and that belongs to the woman.

Q. The surplus you consider belonged to Mary?

A. Yes sir, after he gets his filing. He gets so much out of the surplus, his money he put in the surplus. That is the way I thought it all out.

Q. Wallace, do you remember when you had the original hearing in this case of having testified that you were holding this money for Sam Bob, this \$2700? Do you remember of having stated that in the original trial of this case?

A. No sir. I don't remember that.

Q. You don't remember of having said that? Saying that it belonged to Sam?

A. Why, in reason it was his money that bought the biggest part of the place and the biggest part of that money belongs to Sam Bob because we put all his Delaware money into that place all but a couple hundred dollars of my wife's to fill out buying the improvements. We didn't buy the land we bought the improvements.

338 Q. You then consider that a part of this money at least belonged to Sam Bob?

A. Yes the biggest part of the \$2,700.

Q. Providing the sale stood?

A. Yes sir, the way I want it. And that is the way I want it if it can be done that way; I don't want to go before the Secretary's motions at all. If he has had any new motions about it I don't want to get over that at all.

Q. Wallace, who was with you when you and Sam Bob came

here before the Commissioner in July this year? When he came up here to confess judgment and give up this land.

A. Norwood.

Q. Anybody else? Was Charlie Julian with you?

A. Yes sir he was along. He wasn't on that at all.

Q. But he was along with you at that time?

A. Yes sir.

Q. At the time Sam came into the office and said he wanted to give up this land, did you know anything about the decision of the Commissioner in that case. The decision which was rendered in July the last decision?

A. Why we didn't hear it until afterwards.

Q. You heard it the afternoon on the same day?

A. Yes sir.

Q. You stated a little while ago in your examination that one of the reasons you wanted to give up that land was because it was cut in such shape that it wouldn't be of much use to you? Now you didn't hear that until you came in and Bob wanted to give it up?

A. We came in in the forenoon to the Commission and in the afternoon we got the decision.

Q. But you and Sam came into the office in the morning and asked to give up the land; at that time you didn't know anything about the decision which the Commissioner rendered in the case, did you?

A. No sir.

Q. You heard that in the afternoon?

A. Yes sir.

Q. Did you know anything about Bob giving up his attorneys, Veasey & Rowland, and taking Norwood as his attorney?

A. Yes sir. He done that right here.

Q. Did you and Bob talk that matter over too?

A. Yes sir.

Q. Why did Bob want to change lawyers, do you know?

A. Well he tried for two years and they didn't seem like they was doing any good.

Q. Did you and Bob talk that matter over carefully?

A. No sir.

Q. Did you advise him that you thought it would be well to hire Norwood and turn the other lawyers loose?

A. I didn't advise him to do it; he said he thought it would be best for Norwood to do it we got no hearing and couldn't get no answer. Never knew what was going on when Veasey was working at them; there was six months or more that we didn't hear anything about anything that was going on.

Q. Did Sam ever pay Veasey and Rowland any money as his attorneys?

A. If he has he has done it lately.

Q. Do you know whether he ever promised to give them anything?

A. No sir, he didn't. He didn't hire them while he was under age.

Q. Didn't hire them?

A. No sir.

Q. How did they get into the case?

A. Done by the Delokee Company so they could rob.

Q. You mean the Delokee Oil Company?

A. Yes sir.

Q. Veasey & Rowland were employed by the Delokee Oil Company to fight this case were they?

A. Yes sir.

Q. Did Bob ask Norwood to represent him to act as his lawyer when he was down here in Muskogee?

A. Why he asked him I guess when he was up to Dewey.

339 Q. Before he came down here?

A. Yes sir.

Q. Did he ever pay Norwood anything to act as his attorney?

A. No sir, Norwood hadn't done much only brought him down here.

Q. Did he ever promise to give Norwood anything that you know of?

A. No sir, he didn't. He was fixing up a statement before Norwood what he would pay him a year.

Q. Did you and Sam Bob ask Norwood to represent you or did some one else—someone on the outside get him to represent Sam in this case?

A. No sir, Sam he went up to Dewey and he come back in the evening and he says "I believe I will take Norwood for my lawyer" and says, "He will come up tomorrow and fix it up."

Q. That was before you came down to Muskogee?

A. Yes sir.

Q. Just a short time before?

A. Yes sir, a short while before.

By Mr. Bixby:

Q. You stated a while ago that this oil Company—the Delokee—had engaged Veasey & Rowland to act as attorneys in this case for the purpose of robbery; what do you base your opinion on?

A. Well, because they didn't come and ask us whether we wanted them; and we had to go by everything they said; we didn't have any consent of our own at all to who we should have.

Q. What makes you think they wanted to rob you?

A. Why, because if anything would come up that is anything in it and we tried to stand for it, and they would back up because I seem it the first year. I couldn't see anything that I could get a hold of in any way.

Q. It appeared to you that Veasey & Rowland acted in the interest of the oil company instead of Sam Bob?

A. Yes sir. I haven't got much to say about Mr. Rowland because he is just under Mr. Veasey and I don't know, I believe Mr. Rowland is a straight man. I thought Mr. Veasey was and I had put my whole trust in him until several times I told him to write down to the Commission down at Tahlequah to see if there was any

surplus anywheres between Bartlesville and Tahlequah to file my wife on. He wrote back and says there is no land between Tahlequah and Bartlesville that is surplus. I thought just thought that maybe he made a mistake or misunderstood what I said and I let it run on a while and told him again. I asked him to find out so that I could finish my wife's filing. Same letter come back—no land around Bartlesville that is surplus. That is a point where I look at.

By Mr. Rodgers:

Q. Now you stated a moment ago, Wallace, that you came in in the morning last July and Sam Bob filed his confession of judgment.

A. About 11 o'clock.

Q. And before dinner he filed his confession of judgment, did he?

A. Yes sir.

Q. Then did he at the same time file his statement that he wanted Norwood to represent him as his attorney?

A. Why I wa-n't here when they made that; they was down in another room.

Q. That was done before dinner, wasn't it?

A. I don't know.

Q. Then you came back in the afternoon, didn't you?

A. Yes sir.

Q. Then it was in the afternoon that you received notice of the decision of the Commissioner?

A. Yes sir.

Q. Did Bob understand how the Commission had divided the land?

340 A. Yes sir, he looked at it just before I did.

Q. Did he understand also the part of the decision which said that Bob could keep part of this land providing half of the money was turned over to Heady? Do you remember that part of the decision? That half of this \$2,700 was to be given back to Heady if Bob wanted to keep the land?

A. Yes sir.

Q. Now, after Bob had seen that decision and knew how the land was divided, did he still want to give up the land? Was he still willing to give all the land up?

A. Nothing was said about the 40 on the other side. All that was said about was the land that was split in two.

Q. Didn't you understand that the land was equally divided between Ella Heady and Sam Bob?

A. Nobody ever spoke to me at all until I came in here.

Q. Wasn't that explained to Sam Bob and yourself when you were here?

A. Yes sir, that afternoon.

Q. It was explained to you that the land was evenly divided between Ella Heady and Sam Bob?

A. Yes sir.

Q. Now, after Sam Bob heard how the land was divided, was he still willing to give it up?

A. Yes sir, he wanted the full allotment altogether. He had the idea of giving it up.

Q. And you are sure that Sam Bob understood just what he was doing.

A. Yes sir, he must have understood it.

Q. He was willing to give up all that north 80 providing he could get the south 80?

A. Yes sir, because he has sold it and to make things straight we would just give it back over to them, so as to stop this expense.

Q. Do you think that would be better for Sam Bob to do to take that south 80 instead of the north 80?

A. Yes sir, I think so myself.

Q. At the time he was before the Commission do you think he believed just as you do now?

A. Yes sir.

Q. And you are still of that opinion are you?

A. Yes sir; what is said then I am still that way yet. I think that is the best way. But still I can't control him without his consent.

Q. What improvements are there on the south 80?

A. Why, there is a fence, been a fence there for years.

Q. Are there any houses or barns or anything of that kind?

A. Nothing on it only fence.

Q. In cultivation?

A. Been for years.

Q. Do you know whether Sam Bob has been willing to go with these people to Oklahoma City, Denver and wherever he has been since? Has he gone of his own free will?

A. No sir, I don't think he has.

Q. How do you think they manage to hold him that way and keep him from you?

A. He thought when he started that they would be coming back after they visited in Oklahoma City. After they got him out there they have commenced scaring him. That is what I learned last Sunday by one of the men.

Q. Who told you that?

A. I heard it from Si Johnson. He was down to my house last Sunday. He was talking to me about Sam. I told him that I was beat in the men and he said how it was. He was aiming to go with Sam but when he come to town the next morning he was sick and couldn't go. And he told him that he couldn't go.

Q. That is Si Johnson told Sam he could go with him?

A. And after I guess he couldn't go then Harnard—these two that was to go, I think there was a trap laid at the platform when they was dancing to get him out there and they was to drop back and give him to somebody else.

Q. Si Johnson and Harnard didn't go to Oklahoma City?

A. No sir.

341 Q. Do you know whether Harnard went or not?

A. He went the next day he said.

Q. He went the next day after Sam was gone?

A. Yes sir. That is what he says.

Q. Wallace, did anybody make an offer to Sam Bob to lease that south 80 if he filed on it?

A. Yes sir.

Q. Who made that offer to him?

A. I forget the man's name. He is right here in town.

Q. Would you know his name if you heard it.

A. Yes sir.

Q. Is it Moran?

A. Yes sir.

Q. What does he do here in town, do you know?

A. He is an oil man.

Q. How much did he offer to give Sam for the lease on the south 80?

A. \$3,000 for the lease.

Q. Do you know what oil company he represented?

A. Why it is—I forget the name of them.

Q. Would you know the name of it if you heard it?

A. Yes sir.

Q. Was it the Test Oil Company?

A. I believe that is the Company.

Q. Did Norwood have anything to do with offering that lease to Sam Bob?

A. Yes sir, I guess he did.

Q. Did Norwood say that he was acting for the Test Oil Company, do you know?

A. No he didn't say whether he was acting for them or not.

Q. What do you mean when you say that he had something to do with offering that lease?

A. Well he offered to give Sam that much for the lease. I don't know nothing about who he was offering it for.

Q. Norwood offered Sam \$3,000 for the lease.

A. Yes sir.

Q. I thought you said a minute ago that Moran was the man?

A. I guess Moran offered it to him and he offered it to Sam.

Q. Moran offered it to Norwood and Norwood offered it to Sam?

A. Yes sir.

Q. Did this man Julian have anything to do with that oil Company?

A. I don't know. I don't know anything about the men in the oil business. Not personally, if I see them I know them.

By Mr. Bixby:

Q. Did you understand when Norwood gave that offer to Sam Bob of \$3,000 for the lease whether he was acting for himself or in the interests of Sam Bob in procuring the lease from the Test Oil Company?

A. Well I don't know whether he was working for the interests of Sam Bob or not.

Q. Was that after Sam Bob engaged Norwood as his attorney or before.

A. That is the time that he engaged him at Dewey.

Q. It was after Sam engaged him, was it, that he hade him this offer?

A. No sir, it was before I guess. They was up and talked about it in the afternoon and he came that night and said Norwood wanted to come up and see about it. And so the next day I went up and we talked about it and we had contract all made and he showed it to me and read it.

By Mr. Rodgers:

Q. That offer of \$3,000 which was made by Moran through Norwood was made before Sam told you that he was going to employ Norwood as his attorney was it?

A. Yes sir, that was before.

Q. Offered by Norwood before he employed Norwood as his attorney?

342 A. Why, I don't know whether he had or not.

Q. You think it may have been the same day?

A. Yes sir, it may have been the same day; I went up the next day.

Q. That was before you and Sam Bob came here to the Commissioner's office to give up the north 80?

A. Yes sir.

Q. Do you know anything about Heady having leased the north 80 at all?

A. No sir, nothing about it at all.

Q. Do you know how Sam Bob happened to have this talk with Norwood about the leasing of the land?

A. Why, Si Johnson was down there one day looking around for somebody for a tool dresser, and he came to my house and was talking around there and said he wanted some man to dress tools, and he drove down to the house with me and Sam and some other boys was down there; so he got out and waited until afternoon; and they was fooling around and the first thing I knowed they caught a horse out in the pasture that was hard to catch and when they started Sam told Si to get in the buggy with him, and the other boys come back and Si didn't. I asked them where they went and they said he went on with Si Johnson and about dark he came home. I asked him where he had been and he said he went to Dewey with Si Johnson.

Q. When he came back is the time he told you about this offer?

A. Yes sir, and after that he says "I leased my land; they made an offer to me" and he said "They want you to come up and be satisfied." "Well," I says, "satisfied," I says "If you wants to lease it," I says, "these other men are not going to give you nothing, if you can get the money you had better do it."

Q. Wallace, did anybody ever tell you or Sam Bob that the Commissioner or the Department wanted Sam to come in there and give up that north 80 and take the south 80?

A. No sir, never heard anything of that before.

Q. You and Sam came in voluntarily of your own free will?

A. Yes sir.

Q. Did anybody ever tell you that the Commissioner wanted you to do that.

A. No sir, they didn't. I tell anything I find out straight I don't aim to make anything crooked.

Q. Did anybody ever tell you that the Commissioner said you could do it?

A. No sir, only said that Sam could file on the low 80 and get \$5,000 too.

Q. Who told you that?

A. Didn't I state to you just a while ago?

Q. These two Delawares?

A. Yes sir.

Q. They told you that the Commissioner had said that Bob could file on the south 80 and get \$5,000 besides.

A. Yes sir, that was on the 4th day of July.

Q. Did you ask them where they had heard that?

A. Why the way they talked somebody had been over here; they said "straight goods." They talked as though they had heard it themselves. Like they had come over here or something from the way they talked.

By Mr. Bixby:

Q. Do you know what Oil company Si Johnson was working for?

A. Ain't working for any as far as I know. I think he works just where he can; he is a man that ain't able to do much; he is crippled up.

Q. Did you ever know of his working for an oil company?

A. No sir; only that time he comes out there and gets Sam is the only time that I ever knew him to have anything to do with him. I knew him when he was a boy.

Q. Do you know what oil company he was working for that
343 time that he came up and got Sam?

A. I don't know; I thought he was hired to hunt this man; I don't know anything about it. The way I put it up he was hired because he had a rig from Dewey.

Q. Had a livery rig from Dewey?

A. Yes sir.

Q. Where does he live, does he live at Dewey?

A. Yes sir.

Q. Apparently somebody sent him down to find Sam and bring him back to Dewey?

A. Yes sir; I guess that was the plan; said he was hunting a tool dresser.

By Mr. Rodgers:

Q. Did you and Sam before the time he went to Dewey with Si Johnson ever talk about him giving up that north 80 and taking the South 80?

A. Why, we have talked several times backwards and forwards but then he had made no resolution on it because we didn't know what we could do; we couldn't do anything over what you all could do.

Q. You had talked about it before that time, had you?

A. Yes sir.

Q. Had you talked about it a few days before that time?

A. No, we talked about it before that; I was telling about that 80 was more in cultivation south than the other one, it would be no benefit to a person that wanted to live on it.

Witness excused.

F. Elma Lane, being first duly sworn states that she reported the proceedings in the above entitled and numbered cause, and that the foregoing is a true and correct transcript of her stenographic notes therein.

(Signed)

F. ELMA LANE.

Subscribed and sworn to before me this 27th day of October, 1906.

[SEAL.]

WALTER W. CHAPPEL,

Notary Public.

Received a copy of the foregoing testimony this 29th day of October 1906.

(Signed)

VEASEY & ROWLAND,

Att'ys for Samuel Bob.

ZEVELY & GIVENS,

J. H. HUCKLEBERRY,

Att'ys for Contestant.

CONTESTEE'S EXHIBIT "A."

This agreement made and entered into in duplicate by and between Wallace Thursday of Bartlesville, Indian Territory, party of the first part, and Jesse L. Harnage, of Tahlequah, Indian Territory, party of the second part, Witnesseth,

That the party of the first part hereby grants, bargains and sells unto the party of the second part all the right title and interest, which he, the party of the first part has in and to the improvements erected and standing upon the following described land in the Cherokee Indian Nation. The northeast quarter of the

344 Southwest quarter less 3.08 acres K. O. G. & S. R. R. right of way and the Northwest quarter of the South east quarter of Section 13 Town 26 N. R. 12 East containing 76.92 acres more or less.

In consideration of which the party of the second part engages and agrees with the party of the first part as follows:

That the party of the second part shall select the land covered by the improvements as above described as his allotment in the Chero-

kee Nation. That in the event Sam Bob, the ward of the party of the first part shall lose his present allotment in the Cherokee Nation, by the Contest proceedings now pending against him before the Commissioner to the Five Civilized Tribes in which Ella E. Heady is the party Contestant, then the party of the second part shall relinquish without further consideration all such rights as he may have acquired in the land above described to said Sam Bob, in order that he, the said Sam Bob may select said land herein described as his allotment in the Cherokee Nation.

That in the event the party of the first part shall finally establish his Citizenship in the Cherokee Nation, and in the event also that said Sam Bob shall prevail in the contest proceedings now pending against his allotment, then the party of the second party shall relinquish unto the party of the first part all such right as he may have acquired in the land herein described in order that the same may be selected by the party of the first part.

That in the event the said Sam Bob prevails in said contest case and in the event the party of the first part fails to establish his citizenship in the Cherokee Nation then the party of the second part shall grant to the party of the first part the use, rents and profits of the surface of the above described land as well as the royalty accruing to him, the party of the second part, on a good one of the best oil or gas producing wells thereon as may at the time be determined by the party of the first part. Said several grants to continue and endure for the life of the party of the first part only.

In testimony whereof the parties have hereunto set their hands and seals the 21st day of June 1905.

His
WALLACE X THURSDAY.
mark.
JESSE L. HARNAGE.

Witnesses:

J. A. VEASEY.
C. I. WEAVER.

July 22, 1905.

CONTESTEE'S EXHIBIT "B."

Hon. Tams Bixby, Tahlequah, Ind Ter.

DEAR SIR: Some weeks ago we presented to the Commission to the Five Civilized Tribes a petition of Wallace Thursday, as guardian of Mary Thursday, an insane person, and Sam Bob, a minor, 345 Delaware-Cherokee Citizens, to have certain lands described in said petition certified as surplus Delaware holdings of these two incompetent persons. This petition recited that these two incompetent persons each owned an undivided one-half interest in the lands sought to be certified and the prayer of the petition was that a date be set upon which all the parties in interest might appear and the ownership of the improvements be determined by the Commission. We heard nothing of this petition until in response to a tele-

gram we were apprised that in as much as a contest was pending between Samuel Bob and Ella E. Heady, no lands in which Samuel Bob was interested could be certified as surplus holdings. From this we inferred an intention on your part to hold the 80 acres sought to be set aside as surplus holdings until this contest case was decided, and if the same were decided adversely to Samuel Bob to file him on this tract of land.

It is also our desire that if Samuel Bob does not prevail with regard to the land in contest that he be permitted to file upon the 80 acres which is desired to be set aside, but both Mary Thursday and Samuel Bob have their rights in the premises. They are Delaware-Cherokee citizens and as such have the same rights to sell such improvements upon their surplus holdings as any other Delaware-Cherokee citizen. In fact if there is any distinction and indulgence it should be in favor of these two persons as they are both incompetent and unable to act in the matter for themselves.

It occurs to us therefore that a course may be taken in this matter that will fully protect Samuel Bob in the South 80 so far as selecting the same in allotment should he lose the North 80 and at the same time protect Mary Thursday and Samuel Bob in such improvements as they may have on what we deem to be their surplus holdings. That is that the Commissioner might
346 order a hearing at which the conflicting rights of the several persons who have filed upon this land and of Mary Thursday and Samuel Bob may be determined. If it develops that these improvements are the property of these two incompetent persons, the Commissioner might make a conditional certification of the lands as their surplus holdings, the condition being that they can sell the improvements upon the lands as surplus holdings provided Samuel Bob prevails in the contest now pending. The order of Court directing the sale of the improvements could be of the same condition and the purchaser would be bound by that condition. In that way it occurs to us that your purpose in the premises could be accomplished and Samuel Bob and Mary Thursday be accorded the same rights in their improvements upon said land as are given to other citizens of their class.

Then furthermore, the Commission is holding this South 80 as a substitute allotment for Samuel Bob when as a matter of fact you do not know that his rights to the improvements are such that he can select the land. We recognize that the claims of Jess L. Harnage and Wallace Thursday to the South 80 are such that they cannot prevail against Samuel Bob but as far as Bettie Morton is concerned we know nothing of her rights in the premises. We do know this, however, that she claims that she was in the custody of Wallace Thursday and that he received her payment money and that it was her payment money, rather than that of Samuel Bob's that went into the purchase of the South 80.

Furthermore charges of fraudulent conduct are made in connection with this case and some of them find expression in the decision of the Commission in the Bobs-Heady case. We know as a matter of fact that Betty Morton was filed upon this South 80 at the instance of the same man who was so instrumental in bring-

ing about the sale of the North 80. In short, so far as we can
347 learn Wallace Thursday has done everything in his power
to wrest the two eighties from Sam Bob. This being the
case and inasmuch as the Commission implied that there was fraud
in the case, a hearing on the petition we have filed could be so
broad in its scope that these fraudulent practices could be definitely
determined upon.

So far as we are concerned we are anxious that an inquiry be
made and that it be as searching as possible.

In conclusion we have this to say that if the petition is one that
should not be granted would you kindly make an order to that
effect in such form that the matter may be appealed to the Com-
missioner of Indian Affairs in the regular way.

A further fact that suggests itself to us is that if these incom-
petent persons are to be protected in their improvement at all it
must be done before the third day of September at which time their
rights will cease to exist if not disposed of as suggested.

Very respectfully,

(Signed)

VEASEY & ROWLAND.

July 23, 1905.

Hon. Tams Bixby, Muskogee, Ind. Ter.

DEAR SIR: Under date of July 22nd, we wrote you in regard to
a petition filed with the Commission to the Five Civilized Tribes
to have certain lands set aside as the surplus Delaware holdings
of Mary Thursday and Sam Bob. This letter left the office without
examination and several stenographic mistakes developed later
which we desire to correct.

348 At page three of the original it is stated that "we recognize
that the claims of Jesse L. Harnage and Wallace Thursday
to the South 80 are such that they can prevail against Sam Bob."
This is an error. What we meant to say was that "we recognize
that the claims of Jess L. Harnage and Wallace Thursday to the
South 80 are such that they cannot prevail against Sam Bob," as
we know the condition under which both of these parties filed.
On the other hand so far as Bettie Morton is concerned we know
nothing of her rights and it would take a hearing to determine
this.

At the same page we state that Wallace Thursday has done
everything in his power to wrest both eighties from Sam Bob. In-
stead of "Wallace Thursday" it should have been "Wallace Buford."

It is Wallace Buford who has caused Bettie Morton to be filed
on the South 80 and who was instrumental in inducing Wallace
Thursday to sell the North 80 to Ella E. Heady.

We desire that you consider these corrections in connection with
our former letter.

Yours very truly,

(Signed)

VEASEY & ROWLAND.

CONTESTEE'S EXHIBIT "C."

Contract.

This contract made and entered into by and between L. T. Harned, Geo. S. Hartley, and W. B. Conrad, of Arkansas City, Kansas, parties of the first part and Leslie Coombs, James Gray, and S. A. Evans, Bartlesville, I. T., parties of the second part, witnesseth: that whereas it is the purpose, intention, and agreement of the parties hereto — organize and form a company or corporation for the
 349 purpose of taking gas and oil leases on lands in the Cherokee Nation, Indian Territory, and to develop and operate the same, (A more particular description of said lands hereinafter given) it is hereby agreed and understood by the parties hereto that for and in consideration of the matters and things hereinafter set out the said parties of the first part are to furnish a sum of money not exceeding \$200 for expenses in securing said leases and the incidents attendant therewith and when the said leases shall have been secured and executed and the approval of the same shall be made by the Secretary of the Interior the said first parties are to furnish sufficient money to pay for said leases not exceeding the sum of \$800, and the said parties of the second part agree and bind themselves to use due diligence and effort in arranging for and securing said leases. It is further understood and agreed by all the parties hereinbefore mentioned that when the said approval of the Secretary of the Interior shall have been obtained and the said company or corporation shall have been duly formed the said first parties are to have one-half the stock of said company or corporation and the said second parties are to have the remaining one-half of same.

It is further understood and agreed by the parties hereto that in the event the said leases shall not be obtained or the said approval of the same by the said Secretary shall not be had then one half of said expenses shall be paid by the said second parties, otherwise all expenses are to be borne by the said first parties. The lands herein contemplated are the lands now claimed and occupied by Wallace Thursday and lie within the said Cherokee Nation and near to the town of Bartlesville I. T.

This contract is made in duplicate.

In testimony whereof witness the hands of the parties
 350 hereto this 11th day of May, 1903.
 (Signed)

L. T. HARNARD,
 GEO. S. HARTLEY,
 W. B. CONRAD,

By GEO. S. HARTLEY,
Parties of the First Part.
 LESLIE COOMBS,
 JAMES GRAY,
 S. A. EVANS,
Parties of the Second Part.

Paid to, for and on account of Sam Bob.	
11/ 4/04. Paid to Berentz and Muzzy (Buggy for Sam)	
Wallace's Note.	\$85.00
11/12/04. Expenses to Tahlequah, contest case,	20.00
11/19/04. Attorney fees. Veasey	100.00
11/25/04. Bond for Wallace gdn. for Sam	20.00
2/20/05. Cash to Wallace for Sam	5.00
3/25/05. " " " " " "	15.00
4/28/05. Expense, Veasey to Tahlequah	10.00
5/13/05. Paid Master in Chancery for Wallace gdn. for Sam50
5/18/05. Paid Clerk of Court	5.00
5/29/05. Bond Wallace, gdn. for Sam.....	5.00
6/ 1/05. Attorney fees, Veasey	100.00
5/ 4/05. Cash to Sam	5.00
5/22/05. Expense, Veasey to Muskogee	13.40
5/13/05. Cash to Wallace for Sam	10.00
9/28/05. Attorney fees and expenses, Veasey to Washington	400.00
9/28/05. Cash to Wallace for Sam	10.00
8/39/05. Expenses of Attorney	39.40
8/ 9/05. Cash to Wallace for Sam	14.00
1/12/06. Bond, Wallace gdn. for Sam	20.00
	<hr/>
	\$877.30
3/14/06. Veasey, Expenses to Washington.....	200.00
3/20/06. Masters Clothing Co., clothing for Sam	34.25
4/ 6/06. Attorney expenses	25.00
4/ 7/06. Cash from Sam.....	10.00
4/14/06. Andrew Reed, witness fees and expenses	6.00
4/14/06. T. H. Gibbs " " " "	6.00
4/21/06. Robert Wheeler " " " "	6.00
4/24/06. A. A. Davidson, attorney fees	160.00
5/ 1/06. E. C. De Yarmett, surveying, plats, and expenses to Muskogee	67.00
7/10/06. Expenses, Attorney to Washington	200.00
8/13/06. " " " "	200.00
9/13/06. Attorney fees, Veasey	200.00
10/13/06. Attorney expenses, telegrams, etc.	228.09
W. H. Kornegay, attorney fees at Vinita	25.00
Expenses of witnesses to Vinita	18.00
	<hr/>
	2263.64
6/23/03. Expenses to Tahlequah, Filing Wallace et al and surveying	65.00
7/29/03. Cash paid Wallace Thursday	200.00
5/26/03. " " " "	25.00
11/ 3/03. Court expenses and bonds at Nowata	30.00
12/24/03. Cash paid Wallace	100.00

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5/23/04. Expenses of Dr. Wyatt to Nowata in hearing Mary Thursday case	35.00
6/11/04. James A. Veasey, attorney fees	25.00
6/11/04. L. E. Parker, Master in Chancery fees	5.00
7/14/04. Cash to Wallace Thursday	10.00
9/14/04. Cash to Wallace "	10.00
9/14/04. Clerk fees	5.00
9/14/04. A. M. Etchen master in chancery fees	35.00
9/14/04. Bonds for Wallace Thursday gdn. Mary Thursday	28.50
12/ 6/04. Cash to Wallace Thursday	5.00
2/29/05. " " " "	15.00
3/25/05. " " " "	25.00
4/17/05. " " " "	15.00
4/20/05. Paid W. T. Hutchins, for Wallace	5.00
5/11/05. Cash to Wallace Thursday	15.00
6/26/05. Cash to Wallace Thursday	5.00
7/31/05. " " " "	5.00
9/ 7/05. Paid J. H. Morehouse, Clerk for Wallace Thursday	5.00
8/30/05. For bonds for Wallace Thursday gdn. Mary Thursday	22.00
5/7/06. For bonds for Wallace Thursday gdn. Mary Thursday	5.00
	<hr/>
	695.50

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss!

In the United States Court for the Northern Judicial District of the Indian Territory, Sitting at Nowata, at the April Term, 1904.

No. —. Probate.

In the Matter of the Guardianship of MARY THURSDAY, an Insane Person, Wallace Thursday, Guardian.

Inventory of the Estate.

Inventory of the estate of Mary Thursday, an insane person. Said estate consists of 152 acres of land in the Cherokee Nation of the Indian Territory, the same being the Northern Judicial District thereof, and more particularly described as follows, to-wit:

352 The S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ and the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 13, and the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ and the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 24 T. 26 N. R. 12 E. less 7.76 acres R. R. right of way of the value of \$650.00.

And the following personal property:

5 head Cows E. 25.....	125.00
5 " calves 10.....	50.00
2 " horses E. \$40 and 30.....	70.00
9 " hogs E. 3.....	27.00
Cash	500.00
	<hr/>
	1422.00

Affidavit of Guardian.

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

Be it remembered, that on this 13th day of September 1904, before me, a Notary Public in and for the Territory and District aforesaid, personally appeared Wallace Thursday guardian of the person and estate of Mary Thursday, an insane person, who being by me first duly sworn according to law, says that the above and foregoing is a true and perfect inventory of all of the real estate and all of the goods and Chattels, rights and credits of his said ward that have come into his possession or knowledge.

His
WALLACE X THURSDAY,
mark.
Guardian of the Person and Estate of
Mary Thursday, an Insane Person.

Subscribed and sworn to before me on this 13th day of September 1904.

[SEAL.]

LESTER CHASE,
Notary Public.

My commission expires October 10, 1907.

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

I, Chas. A. Davidson, Clerk of the United States Court for the Northern District of the Indian Territory, do hereby certify the within and foregoing to be a true and correct copy of an inventory of the estate of Mary Thursday, an insane person, as the same appears from the original now on file in my office at Nowata.

Witness my hand and the seal of said Court at Nowata, I. T., this 3rd day of November, A. D. 1906.

[SEAL.]

CHAS. A. DAVIDSON, Clerk,
By J. H. MOREHOUSE, Deputy.

353 UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

In the United States Court for the Northern Judicial District of the
 Indian Territory, Sitting at Nowata, at the November Term, 1904.

No. 45. Probate.

In the Matter of the Guardianship of SAM BOBS, a Minor; WALLACE
 THURSDAY, Guardian.

Inventory of the Estate.

Inventory of the Estate of Sam Bobs, a Minor.

Said estate consists of 80 acres of land in the Cherokee Nation of
 the Indian Territory, the same being in the Northern Judicial Dis-
 trict thereof, and more particularly described as follows, to-wit:

S.W.-4 of the N.E.-4 of the S.E.-4 of the N.W.-4 of Sec. Thirteen
 Township Twenty-six North, Range Twelve East, I. M.

Affidavit of Guardian.

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

Be it remembered, that on this 5th day of May 1904, before me,
 a Notary Public in and for the Territory and District aforesaid, per-
 sonally appeared Wallace Thursday guardian of the person and
 estate of Sam Bob, a minor, who being by me first duly sworn ac-
 cording to law, says that the above and foregoing is a true and
 perfect inventory of all the real estate and all of the goods and
 chattels, rights and credits of his ward that have come into his pos-
 session or knowledge.

his
 WALLACE X THURSDAY,
 mark.

*Guardian of the Person and Estate of
 Sam Bob, a Minor.*

Witness his mark:

O. E. DRAKE.
 ANDREW CLARK.

Subscribed and sworn to before me on this 5th day of May 1904.

[SEAL.]

JAMES A. VEASEY,
Notary Public.

My commission expires Nov. 7th 1907.

SAM BOB, Minor; WALLACE THURSDAY, Guardian.

On this 22nd day of May 1906 comes on to be heard the final report of Wallace Thursday Guardian of Sam Bob and the Court being sufficiently advised finds.

That said guardian has fully accounted for all sums of money received by him on account of said ward. That the sum of Eight Hundred Dollars balance on hand should be paid to said Sam Bob, his majority having been attained on the 4th day of March 1906.

It is therefore considered ordered and adjudged that said Guardian be and he is hereby discharged upon the payment to said Sam Bob of said sum of \$800.00.

JOSEPH A. GILL, *Judge.*

UNITED STATES OF AMERICA,
Northern Judicial District, Indian Territory, ss:

I, Chas. A. Davidson, Clerk of the United States Court for the Northern District of the Indian Territory, do hereby certify the within and foregoing to be a true and correct copy of an order of court in the matter of the guardianship of Sam Bob, a minor, as the same appears of record in my office at Nowata.

Witness my hand and the seal of said Court at Nowata, I. T. this 3rd day of November, A. D. 1906.

[SEAL.]

CHAS. A. DAVIDSON, *Clerk.*

By J. H. MOREHOUSE, *Deputy.*

Commissioner to the Five Civilized Tribes.

Return to James K. Jones.

MUSKOGEE, INDIAN TERRITORY, October 25, 1906.

Filed Jan. 27, 1910. L. G. Disney, Clerk U. S. Circuit Court,
Eastern Dist., Okla.

Testimony Given by Sam Bob in the Presence of Mr. Bixby, in the Matter of Cherokee Allotment Contest No. 830, Entitled Heady versus Bob.

SAM BOB, being first duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Rodgers:

Q. Sam, how old are you?

A. Going on 22.

Q. When were you 21?

A. 4th of last March.

Q. Do you remember when you were in the office sometime last July?

A. Yes, sir, let me see, with Norwood and those parties?

Q. Yes?

A. Yes.

Q. Who was with you at that time?

A. Si Johnson, Norwood and Thursday.

Q. Wallace Thursday was with you at that time?

A. Yes.

Q. He is the husband of Mary Thursday, your grandmother?

A. Yes.

Q. Wallace Thursday is the man you have always lived with?

A. Yes, sir.

Q. How did you happen to come down that time to the Commissioner's office?

A. Well I just happened to be at home.

Q. Who got you to come down here?

A. I had been to a dance that night and was sleepy and slept pretty late next morning, and Si Johnson came down and got to talking and wanted me to go out riding with him, and I wouldn't go for awhile and then he wanted me to go to Dewey. At first I didn't want to go I was so sleepy, and then after we had that talk we went up there and talked to Mr. Norwood.

Q. What did Norwood tell you?

A. He just advised me what he thought was best for me to do.

Q. Did Si Johnson take you to Norwood's office?

A. Yes sir.

Q. When you left home to go to Dewey did you intend to go to see Norwood?

A. Didn't think about it.

Q. What did Si Johnson say he wanted you to come to Dewey for?

A. He just told me if I would go up there Norwood could tell me best what would be best to do.

Q. You went together to Dewey and to Norwood's office?

A. Yes.

Q. What did Norwood tell you?

356 A. He just told me if I would come down with him that we could straighten it out.

Q. Did he tell you how he was going to straighten it up?

A. No, he didn't say.

Q. Did he tell you that you would have to give up the North eighty?

A. No, he thought it would be best for me to give that up and take the south eighty.

Q. Did Norwood tell you that he thought it would be best for you to give up the north eighty and take the south eighty?

A. Wait, lets see a minute—been so long I pretty nearly forgot all of it.

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Q. Did you think anything about giving up this north eighty before you went up and talked with Norwood?

A. No, I didn't hardly know anything about that part. I told him I didn't know which I would do, and then he kept on talking around till Thursday told me he thought it would be best for me to take the other eighty.

Q. After you got through talking with Norwood then you went back home?

A. Yes.

Q. Then you told Thursday what Norwood had told you?

A. Yes, then we went up there.

Q. Did you talk it over with Norwood again?

A. I suppose so. I don't know what he was talking about I was out of doors.

Q. Did Wallace then tell you that he thought it would be best for you to give up the north eighty and take the south eighty?

A. Yes, he says if I would give that up then I would get out of trouble.

Q. How soon after this talk with Norwood was it that you came to the Commissioner's office?

A. How soon?

Q. Yes?

A. Lets see—I think it was the next—lem me see I think it was the next morning, no, it was two days after that I think it was. He had to give Thursday a chance to get somebody to stay with the old lady.

Q. Now then is this the way it was, you first went up to Norwood's office with Si Johnson, and then you went back home and had a talk with Thursday, the next day you and Thursday went up to Dewey and talked it over with Norwood and then two days after that you all came to Muskogee?

A. Some way like that.

Q. Do you remember when you came into the office here at Muskogee, was it in the morning?

A. Morning, I think. Believe it was in the morning I'm not sure.

Q. At the time you came into the office did you know that the Commissioner had decided this case?

A. No sir, I found it out later on, though.

Q. When you came in you didn't know that the Commissioner had decided the case?

A. No, I didn't know then.

Q. Do you remember of filing a confession of judgment in that case when you came in, stating that you wanted to give up that land?

A. Confession?

Q. You remember filing that?

A. Yes, sir.

Q. You signed that?

A. Lets see—Yes, I believe I did.

Q. Look at that Sam and see if you remember that? Is that your name down at the bottom?

A. Yes.

Mr. Rodgers:

Referring to confession of judgment marked "B" attached to the record in this case.

Q. Do you remember that?

A. Yes.

Q. That states now comes the contestee, Sam Bob, on his own proper person, and requests the Commissioner to cancel and set aside his selection of land, in controversy, and asks that the contestant may have judgment therefor for the reasons given in
357 his testimony of this date. You remember of doing that, don't you Sam?

A. Yes, I think I do.

Q. Do you remember whether you gave that to the Commissioner in the morning when you first came up?

A. I don't know how it was now—I think it was in the morning, though. I wouldn't be sure.

Q. When you signed that, Sam, did you know that the Commissioner had decided this case dividing the land?

A. No, I didn't know.

Q. You didn't know it at that time?

A. No, sir.

Q. Did you afterwards hear that the Commissioner had decided the case and had divided the land between you and Ella Heady?

A. Yes.

Q. What time of day was that?

A. In the afternoon sometime.

Q. You came back in the afternoon and were told the case had been decided, were you?

A. Yes, sir.

Q. In the morning, Sam, when you come up to file this confession why did you want to give up the land?

A. Because it wasn't making me nothing. The party that had the land it wasn't doing them no good. I thought it would be best and the old man advised me to do it.

Q. Did you know what you were doing when you were filing that here; that it meant that the north eighty was going to be given to Ella Heady?

A. That is what I always heard.

Q. At the time when you filed this paper you were willing that she should have the north eighty?

A. Yes, because I thought I would get more out of it that way.

Q. Did Wallace Thursday advise you to do that?

A. Yes, he said I could change that and take the south eighty.

Q. He thought it better to take the south eighty, did he?

A. Yes, sir.

Q. Did anybody ever offer you any money to give up that north eighty and take the south eighty?

A. No. I don't think they did.

Q. I mean when you came in in July and wanted to give up the land; did anybody ever offer you any money to do that?

A. No.

Q. Did Norwood offer you any money?

A. No, sir.

Q. Did Si Johnson offer you any money?

A. No, sir.

Q. Didn't Norwood say something about taking a lease on the south eighty from you?

A. Yes, he said he would take a lease on one of the eighties.

Q. If you got the south eighty did he say he was going to take a lease?

A. Yes sir.

Q. How much did he say he would give you for the lease?

A. \$3,000.00.

Q. Did he say he was going to take that for himself or for someone else?

A. He didn't say, he just told me he would give me \$3,000.00, or said the Test Oil Company would.

Q. Was that before you came to Muskogee or after you came here?

A. I think it was after I came here. I forgot now how it was.

Q. Do you remember whether he told you anything about that lease while you were still up in Dewey?

A. I don't know that part; I know the old man was talking and that he wrote up some kind of an agreement; that he was to pay the way.

Q. Norwood paid your way down here?

A. Suppose so; he paid the way.

Q. You think he also paid Thursday's way?

A. Yes, sir, he said he did I don't know.

Q. Did you consider that Norwood was acting as your lawyer in this matter, or did you think he was acting for somebody else?

A. I thought he was trying to help me out, is the way he talked.

358 Q. Did you agree to give Norwood anything for his help to you?

A. No, he said he was doing it for nothing.

Q. Were you in the office yourself when this confession of judgment was left here?

A. Which office?

Q. In the Commissioner's office?

A. Lets see, I don't know.

Q. Do you remember where you were when you signed this?

A. I was in there where that tall fellow sits, some place back there; I don't know the name.

Q. On the second floor here?

A. Yes, I think the second floor.

Q. Tall fellow with glasses?

A. Yes, I don't remember now where I did sign.

Q. You were in a room with a man who worked for Mr. Bixby when you signed it, were you?

A. I don't know—too hard for me to say where I was now—lets see.

Q. After you came back in the afternoon and found out that Mr. Bixby had decided that Ella Heady should have half of the land and that you could have the other half, provided you would pay her half the money you had gotten for the land, were you still willing to give all the land up and keep all the money that had been paid you?

A. I was if I could have the land and have it fixed up the way I wanted it, squire, but when they fixed it another way, I didn't like it that way.

Q. You didn't like it the way the land was divided?

A. No.

Q. Then after you heard that the Commissioner had decided the case you still wanted to give up all the land did you, all the north eighty?

A. After I found it out I think I was still willing to give up if I could keep the forty below there, so it would be north and south. I don't know whether it was fixed up that way or not.

Q. Did you know that you had the right to appeal this case to the Secretary of the Interior if you wanted to?

A. No, I didn't know then.

Q. Didn't they tell you in there that you could appeal it to the Secretary of the Interior if you didn't like it?

(No response).

Q. Do you remember whether they told you that or not?

A. No.

Q. Do you remember of ever signing that, Sam?—that paper with our name on it?

A. Yes.

Q. That is what they call giving up the right of appeal, waiver of right to appeal?

A. Yes.

Mr. Rodgers: Showing witness the waiver of right of appeal marked "C" filed with the records in this case.

Q. Do you remember of signing that paper?

A. Yes, I think I signed it.

Q. That paper says in substance that you didn't want to appeal the case; that you are willing to let Ella Heady have all the north eighty, provided you can keep the \$2700.00 which were paid Mr. Thursday for that, also provided you could file on the south eighty, do you remember that?

A. Yes.

Q. You were told just what that meant were you?

A. Yes—I was thinking about something else.

Q. Do you remember when you were down here before that some-

time, filing a paper stating that you didn't want Veasey and Roland to represent you as your attorneys any more?

A. Yes sir.

Q. Who got you to sign that paper?

A. Norwood, I think got me to sign it.

359 Mr. Bixby:

Q. Who is Norwood?

A. Big fat fellow.

Q. What is his full name?

A. A. H. his initial, Andy Norwood or something like that.

Mr. Rodgers:

Q. Did you file that paper saying that you didn't want Veasey and Rowland to represent you any more at the same time you filed the other paper?

A. Yes.

Q. Did Norwood say he would give you any money if you would turn Veasey and Rowland loose?

A. No, sir.

Q. At that time was that what you wanted to do, turn Veasey and Rowland loose and have Norwood represent you?

A. No, I thought they was doing all right until they said they was trying to skin me.

Q. Who said they were trying to skin you?

A. Thursday said that was the way they was acting.

Q. Thursday said Veasey and Rowland was trying to skin you?

A. Yes.

Q. When did he tell you that?

A. Told me lots of times, said they was working for somebody else case and never worked on mine.

Q. When you were down here in July and came to the Commissioner's office did you want to turn Veasey and Rowland loose and have Norwood represent you?

A. When?

Q. When you were here in July did you want to have Norwood represent you instead of Veasey and Rowland; was that what you wanted at that time?

A. Yes, I think it was fixed up right, I don't know.

Mr. Bixby:

Q. Norwood told you, didn't he, that he wouldn't charge you anything?

A. Yes.

Q. He was just wanting to help you out?

A. Yes, he said he had always help- the Indian and had known me a long time.

Mr. Rodgers:

Q. Sam when you filed these papers down here did you understand just exactly what you were doing, that you were giving up this north

eighty acres, if you kept the \$2700.00; that Veasey and Rowland were not to represent you any more, and that Norwood was to be your lawyer?

A. Did I understand it that way?

Q. Yes?

A. Yes.

Q. It was your wish at that time to do that, was it?

A. Yes, at that time I did.

Q. Did Norwood ever say anything to you about going to Washington for you?

A. No, he never did say anything to me about going.

Q. Didn't he say he was going to Washington for you?

A. No.

Mr. Rodgers:

Q. Sam, before you came down here to the Commissioner's office in July did anybody tell you that Mr. Bixby wanted you to come down here and give up that north eighty acres?

A. No, I don't think nobody told me.

Q. You never thought that Mr. Bixby wanted you down here then did you?

A. No.

360 Q. Did anybody tell you before you came down here that you were going to lose that north eighty acres; that you were going to lose out in this contest, and lose the north eighty?

A. No, I have had lots of people tell me but I don't know who they were.

Q. You have heard a good many things about this contest case?

A. Yes sir.

Q. Did you know the south eighty had been filed on before?

A. Yes, I knew it had been filed on.

Q. Who filed on it, do you know?

A. Harnage, I think was one of them.

Q. Did you hear that anybody else had filed on it?

A. I think some woman filed on it, I don't know who it was, though.

Q. Did you ever hear that Wallace Thursday had asked for that land as his allotment provided he was enrolled?

A. (No response.)

Q. Did you ever hear that?

A. Yes, I heard that.

Q. Where were you, Sam, when you became 21 years old on the 4th of March?

A. Oklahoma City.

Q. How did you happen to go over there?

A. Just happened to be taking a trip.

Q. Did anybody take you over there?

A. No.

Q. Who was you over there with?

A. I was over there with Harned this time. We had been talking about taking a trip long time before that.

Q. Just tell me how you happened to go over there?—where were you before you started on that trip?

A. At home.

Q. At Bartlesville?

A. Yes sir.

Q. Did Harned go over there with you, or did you meet him after you got in Oklahoma City?

A. First time I went before he did.

Q. That is when you went over there in March?

A. And he came down to my house.

Q. Who is Harned, do you know his full name, what his initials are?

A. No, I don't know his full name.

Q. Is he a white man?

A. Yes, sir.

Q. An oil man?

A. He used to be, I don't know what he is now.

Q. Lives at Bartlesville?

A. No.

Q. Do you know where he lives?

A. He lived at Coffeyville.

Q. He came to your house near Bartlesville and took you over to Oklahoma City?

A. I went with him over there.

Q. Did he pay your way?

A. I supposed he paid the way, or the company, I don't know which.

Q. What reason did he give for you to go over there with him?

A. Just said we would go over there and have a time.

Q. What kind of a time did he mean? Did he say what kind of a time it would be?

A. No, just said have a time.

Q. How many days was that before you were 21?

A. I left in—let's see—February, I don't know what time. I know I was gone a month before I was of age. I don't know what time it was in February.

Q. Were you over in Oklahoma City all that time?

A. No.

Q. Where else?

A. I stopped in Oklahoma City about a week; left there and went down to Houston, Texas, and then from there to Galveston, and then from there to Dallas, and then to Fort Worth, and from Fort Worth to Oklahoma City.

Q. Who was with you all the time, anybody?

A. Harned.

Q. Was Harned paying all the bills?

A. Yes.

Q. Did he say why he was taking you around to all these places?

A. No, I told you a while ago, he said he was taking me around to have a time.

Q. Did he say what kind of a time?

A. No.

361 Q. What kind of a time did you have, Sam?

A. We had a pretty fair time.

Q. Drink any on that trip, or anything like that?

A. No.

Q. Did you meet any fast women?

A. No.

Q. Did Harned treat you all right?

A. Yes, he treated me all right the time I was with him.

Q. He stayed with you all during that trip did he?

A. Yes.

Q. When you come back to Oklahoma City did you meet anybody else there?

A. What time?

Q. In March when you came back from Galveston?

A. No, I wasn't down there but a day or two. Sometime, the little time we was there with that Veasey.

Q. Were you in Oklahoma City on your birthday?

A. Yes sir.

Q. Is that the day you met Veasey?

A. Yes, it was in the night, I don't know the time it was, though. Sunday was my birthday, and I think I met him on Monday night, I think it was. I don't know how it was now.

Q. When you refer to Veasey, do you mean this lawyer of the firm of Veasey and Rowland?

A. Yes, it was Veasey, Rowland wasn't there.

Q. It was Veasey; Veasey you mean now?

A. Yes.

Q. You met him the day after you were 21 in Oklahoma City?

A. That evening.

Q. What did he say to you?

A. He didn't have much to say. We went to a show that night, me and him and Harred.

Q. Then what did you do?

A. Walked up the street and he said he was going to bed, and then we went to bed. He said he would see us in the morning.

Q. Did you go right to bed after you left Veasey?

A. Yes.

Q. Did you see him again in the morning?

A. Yes.

Q. What did you do then?

A. Fixed up some papers; I forget what kind they was.

Q. Did you understand what the papers were?

A. Something about leasing land, I think.

Q. Do you know what land the lease covered?

A. I suppose it was the north eighty.

Q. You understood it was the north eighty?

A. I think that is the piece. At the time they said they was going to win it.

Q. How much money did they give you, if anything?

A. They didn't give me any. They said they would give me as much as anybody else.

Q. They say how much that would be? .

A. They said they would give me as much as anybody else.

Q. Was it an oil lease?

A. Yes, oil and gas lease, or some such name as that.

Q. Oil and gas lease?

A. Yes, I think that was the name.

Q. You don't know how much money you were going to get?

A. No, I don't know.

Q. Were you willing to give them that lease on the north eighty?

A. I had bargained it, but I never told them I would let them have it.

Q. How long did you tell them they could have that lease for?

A. Let's see—time they got the old lady's lease I don't know when that was—about two or three years.

Q. You intended to stand by your bargain then, did you, and let them have that lease?

A. Yes, at that time I did.

Q. When you were in Oklahoma City?

A. Yes sir.

Q. You signed the papers, did you, at that time?

A. Yes sir.

Q. What did you do after you signed those papers; did you stay in Oklahoma City?

A. Let's see—I don't know whether Veasey went off that morning or that night. He said he was aiming to go some place, he said

he had a case on hand, I don't know where it was, though.
362 I think maybe he stayed there a couple of days; Harned heard his folks was sick and we had to go back; stayed about a day, I think, after that; a night, left that morning.

Q. Did Harned come back to Bartlesville with you?

A. Yes sir, he came back up and went on; got off at Bartlesville.

Q. You were at home?

A. Yes sir.

Q. Did you tell Wallace Thursday what you had done; that you had signed these leases?

A. I think they had come to him first and talked to him about it. He talked to them and told them if they would build me a house on it, something like that, and they told me they was going to build a house. They asked me what size house and I told them I wanted a six room house. Wallace said he heard they was going to put up a two or four room house.

Q. This agreement about the house was made before you signed the papers, wasn't it?

A. Yes, sir, they fixed that up before they came over there.

Q. After you returned to Bartlesville from Oklahoma City how long did you stay at home that time?

A. I don't know, a couple of months.

Q. Did you stay at home until you came here to Muskogee in July?

A. Yes, I think I stayed all that time.

Q. You didn't take another trip then until you came down to Muskogee?

A. No.

Q. After you came here to Muskogee and wanted to give up this north eighty, where did you go, after you got through here?

A. Where did I go?

Q. Yes, did you go back home to Bartlesville?

A. (No response.)

Q. Do you remember when you were here in the Commissioner's office in July, after you got through with that business, where did you go?

A. Went home from here.

Q. How long did you stay at home that time?

A. I believe I stayed at home about two days.

Q. Then where did you go; did you start on a trip east then?

A. They kept on telling me it would be best idea for me to take a little trip down in Texas to keep these other people from bothering me so.

Q. Who told you that?

A. Norwood.

Q. Who else?

A. Si Johnson.

Q. Did Wallace Thursday say he thought you had better go, too? or did you ask him about it?

A. Yes, he thought it would be best for me to go.

Q. You started out then to go to Texas?

A. I believe Wallace went. After we got home, stayed at home a day the next day I and him went up to Dewey.

Q. You and Wallace Thursday?

A. Yes, him and them had a kind of a talk.

Q. Wallace and Norwood?

A. Yes, and they got to talking and they thought it would be best for me to go, and then they fixed up that check for \$500.00.

Q. Who fixed that up?

A. Norwood.

Q. He gave you a check for \$500.00?

A. The Company did.

Q. What company?

A. Test Oil Company.

Q. What was that check for \$500.00 for; how did they happen to give you that money?

A. For lease I suppose.

Q. Did you sign any paper; any lease?

A. I think I did, I'm not sure.

Q. A lease for what land; for the south eighty do you mean?

A. I don't know now, I suppose it is the south eighty, that is if I can get it.

Q. Did you sign that lease down here in Muskogee before you went back home?

A. I think I did, I'm not sure.

Q. Do you know where you were when you signed; were
363 you in some office here in Muskogee?

A. I was in some office but I don't know where.

Q. Did Norwood have you sign the paper?

A. I don't know.

Q. Was Thursday with you when you signed?

A. Yes, I think he was.

Q. After you got back home and went up to Dewey, Norwood gave you a check for \$500.00, did he?

A. Yes, they fixed it up and got it cashed and give me \$250.00, and give the other part to Thursday and he took it down to Bartlesville. I stayed all night at Si Johnson's. We got him to stay, and next morning we took the nine o'clock train and went to Independence, and then from there went down to Fort Worth, Texas, and stayed there about a week.

Q. Who was with you?

A. Si.

Q. Where did you go from Fort Worth?

A. Stayed there awhile, Norwood heard we got into trouble and then come down.

Q. What did you get into?

A. He heard we got in trouble.

Q. Norwood heard you got in trouble?

A. Yes.

Q. Did you get into trouble?

A. No. We went from there to Bowie and took the Santa Fe from there to Wichita and from there to Kansas City and stayed up there pretty nearly a week.

Q. Was Si with you all this time?

A. Si and Norwood both.

Q. Where did you go from Kansas City?

A. Stayed there a while and then we heard that somebody telegraphed we had to go to Washington.

Q. Did you go to Washington then from Kansas City?

A. Yes, I didn't want to go. I told them I hated to go. They said it would be a nice trip. I told them it was so awful far I didn't want to go.

Q. Did you go?

A. Yes, I finally went.

Q. Did they make you go, or were you willing to go?

A. They wanted me to go. Of course I didn't want to go as I said while ago. I told Norwood I didn't want to go.

Q. They said you had better go, did they?

A. Yes, they said go up there and go before the Indian Agent.

Q. You went on to Washington with them?

A. We went from Kansas City to Independence, and from there to Coffeyville, and from there to Parsons, and from there to St. Louis, and Indianapolis I believe we changed cars and went to Buffalo, New York, and they kept me there about four days. They wasn't in no hurry to go back there. They was in a terrible big hurry when we first started.

- Q. Was Norwood with you all this time?
A. Nobody but Norwood and John Merand.
Q. Who is he?
A. Fellow in the oil business, I guess.
Q. One of the Test men?
A. I suppose he is.
Q. Who was paying the expense of the trip?
A. The Company.
Q. Where did you go after you left Buffalo?
A. From there to Washington.
Q. How long did you stay in Washington?
A. Four days.
Q. Did you go to see the Indian Agent, or Secretary of the Interior?
A. Yes, I went there; I didn't see him.
Q. What did you do after you left Washington?
A. I didn't do nothing, just walked around.
Q. After you left Washington where did you go?
A. We came back home, Muskogee here.
Q. Came right straight from Washington to Muskogee, did you?
A. Yes sir.
Q. How long did you stay in Muskogee?
A. I don't know three days I believe, four.
Q. Then where did you go? back to Bartlesville?
A. Went home.
Q. That was quite a long trip, wasn't it?
A. Yes.
364 Q. About how long were you gone altogether?
A. Me and Norwood?
Q. Yes.
A. Month and a week, I believe.
Q. Norwood paying the expenses all the time, was he?
A. Yes sir.
Q. Did you spend all this \$250.00 while you were away?
A. Yes sir.
Q. As long as your money lasted, then, you paid for your trip, did you?
A. No, I let him have \$50.00, I believe, something like that. He said he didn't have nothing.
Q. You loaned \$50.00 to him, did you?
A. Yes sir.
Q. Did you buy any railroad tickets with that \$200.00?
A. No.
Q. How did you spend it?—pay for your board or buy anything with it?
A. Spend it along as I wanted anything.
Mr. Bixby:
Q. Did Norwood pay all your hotel bills?
A. Yes sir.

Mr. Rodgers:

Q. All the time you were on this trip were you willing to be traveling around this way, or did anybody force you to stay away from home?

A. I didn't want to go they just kept after me.

Q. You wanted to go home, did you?

A. Yes.

Q. Did they force you to stay with them, or did you stay of your own accord, with Norwood and Si Johnson?

A. They kept after me to stay; said I better not go home because them other people would get after me if I went back.

Q. Did these people, Norwood and Si Johnson, threaten you at all?

A. No.

Q. Did you have any money when you were in the east, any of your \$200.00 so you could come home if you wanted to?

A. Had some money left?

Q. Enough to come home on?

A. I don't know whether I had enough left or not; I had somewhere along about \$35.00 or \$40.00 somewhere along there.

Q. Did you ever ask them for money to come home on?

A. No sir.

Q. When you got back to Bartlesville from your trip made through the east how long did you stay at home that time?

A. When I got back home I stayed about, I forget what month it was I got back in, I don't know what month it was in—let's see—sometime last part of August, something like that.

Q. You were down here before the Commissioner's office in July, 17th, then you say you were gone a month and a week on this trip, so it must have been sometime during the latter part of August when you got back. How long did you stay at home in Bartlesville when you got back?

A. I stayed here about—let's see—about a couple of weeks, something like that, I don't know a couple of weeks; a week.

Q. You stayed at home about two weeks, then where did you go?

A. Stayed at home about two weeks, and then these other fellows kept following me around.

Q. Who do you mean by these other fellows?

A. Veasey and the Delakee people.

Q. What were the men's names who were interested in this Delakee Company who got after you?

A. There was two or three of them, Gray and Martin.

Q. What is Gray's first name?

A. Jim Gray and Fide Martin.

Q. Anybody else?

A. Bal Thompson—B. H. Thompson.

Q. Anybody else?

A. (No response.)

365 Q. They are all oil men?

A. Two of them, I don't know about Thompson.

Q. Did Mr. Veasey or Mr. Rowland come to see you?

A. No.

Q. What were these Delakee people trying to get you to do?

A. Trying to get to talk with me, I guess.

Q. Did you have a talk with them?

A. No, I didn't talk with them. They tried to get Johnson to talk with me, tried to get him to use his influence on me.

Q. What was it that he wanted you to do?

A. (No response).

Q. Did these Delakee people tell you what they wanted you to do?

A. No, they never did get that time.

Q. After you stayed at home about two weeks did you leave again?

A. No, they told Johnson and then we had a dance there on the old lady's place I believe on Tuesday or Wednesday night, I don't know which it was, and all of them fellows come down there, Si Johnson and all them Company fellows, Gray and Martin and Harned and Johnson was all there that night talking around. They kept telling me that he believed I better go on the other side, that he thought they would do the best for me.

Q. On the Delakee side?

A. Yes, and I told him I didn't hardly want to do that. He said I would beat these other people. I told him I would beat myself too.

Q. Si had changed over; wasn't he talking for the Test people at first?

A. Yes.

Q. All these men were down here at that dance were they?

A. Yes.

Q. Did they tell you they wanted you to leave Bartlesville and go any place?

A. No.

Q. Didn't you leave that night and go away?

A. No, they didn't tell me anything about wanting me to leave. They just monkeyed around and Fide Thompson kept talking about and I told him I didn't want to go, I was intending to go too after I got back from here; I didn't aim to go to Oklahoma City, they said they would go with me.

Q. Did you go home after the dance?

A. Yes, I went home and got some other clothes.

Q. Did you start out for Oklahoma City that same night?

A. Went down to Oklahoma City——

Q. Who went with you?

A. Harned and Johnson.

Q. Did they persuade you to go to Oklahoma City, or did you go willingly?

A. No, I didn't intend to go myself.

Q. How did you happen to go with them?

A. Well, they wouldn't wait for me until morning. I wanted to get some money and they wouldn't stay, they said they had plenty of money, they said I didn't need to worry about money.

Q. Did you go home to get any money before going?

A. Yes, I got \$5.00 from the old man. I didn't think I would be gone more than a couple of days.

Q. You got \$5.00 from Wallace?

A. Yes. Went down to Oklahoma City, stayed there about two or three days, and then Harned he wanted to go to McCloud, Oklahoma, and so we went down there. He said he would show us the country. And then after we got there we went down to Shawnee.

Q. Did Harned stay with you all the time in Oklahoma City?

A. Yes sir.

Q. Went to Shawnee?

A. McCloud and then to Shawnee.

Q. Then where did you go?

A. Stayed at Shawnee all that day. Got there about 11 o'clock and we left about—I don't know whether it was 4:45 or 4 o'clock.

Q. How did you happen to go to McCloud and Shawnee?

A. Said he would take me down and show me the country.

Q. Just went on sort of a trip?

A. Yes, sir.

366 Q. Anybody else with you except Harned?

A. Thompson.

Q. Where did you go after you left Shawnee?

A. And from there took the Santa Fe to Arkansas City.

Q. Did Harned and Thompson go with you?

A. Yes, sir, stayed there about all night till next morning, I believe.

Q. Where did you go next morning?

A. Newton, Kansas. Harned left us at Arkansas City and then the other fellow come.

Q. Thompson and Martin went to Newton with you?

A. Yes.

Q. How long did you stay at Newton?

A. Changed cars and went to Denver, Colorado.

Q. How long did you stay in Denver?

A. Two weeks.

Q. And then where did you go?

A. Colby, Kansas.

Q. How long did you stay there?

A. Three days, I believe.

Q. Were Thompson and Martin with you all the time?

A. Yes.

Q. Where did you go from Colby?

A. Back to Denver.

Q. How long did you stay the second time in Denver?

A. Two or three days, I don't know which it is now.

Q. Then where did you go?

A. Went from there to Colorado Springs and Manitou.

Q. How long did you stay at Manitou?

A. A week.

Q. Thompson and Martin were with you all the time, were they?

A. That place Colorado Springs and Manitou?

Q. Yes?

A. Went to Colorado Springs and stayed there about four days and went from there to Manitou.

Q. And you went from there back to the Springs?

A. Yes, stayed all night; next day we went back to Manitou, and

then took a ride through the Garden of the Gods, the Grand Canyon I believe is the name of the place.

Q. Then what did you do? Where did you go?

A. Then we left there and come to Newton, Kansas, and stayed there about a day, that was on Sunday, I believe, then we got on the train and went from there to Arkansas City.

Q. Have you been in Arkansas City ever since?

A. Yes, about a month or three weeks.

Q. After you left Arkansas City and left Colorado and until you got back to Arkansas City were Martin and Thompson with you all the time?

A. Martin and Thompson stayed with me, stayed with me until I got to Arkansas City; Thompson stayed and Martin left.

Q. They were with you on this trip all the way round?

A. They wasn't with me all the way around except Thompson.

Q. On this trip from Arkansas City to Denver and Manitou and Colorado Springs, and back to Arkansas City again were both Martin and Thompson with you?

A. Yes.

Q. Who paid the expense of that trip, Sam?

A. Martin paid it.

Q. He paid the railroad fare and hotel bills all that time?

A. Yes sir.

Q. Did you have any money on that trip?

A. No.

Q. This \$5.00 which you got from Wallace when you started out for Oklahoma City is all the money you had, was it?

A. No, when I been in Arkansas City the last month or three weeks—

Q. I mean on this trip, you said before you started for Oklahoma City you got \$5.00 from Wallace Thursday; was that all the money you had during this trip?

A. Yes.

Q. Martin paid all the bills?

A. Yes.

Q. Were you willing to take all that long trip with these two men; did you go of your own free will?

A. Yes, I wanted to go out that way and see the place. I heard them say so much about it.

Q. You were willing to go to Denver, were you?

A. Yes, I wasn't thinking about going there, though.

Q. Who suggested that you go to Denver?

A. Martin said we might as well go there and see a time.

Q. Did you ever try to get back when you were out there?

367 A. Out where?

Q. In Denver?

A. No.

Q. Were you glad to go on this trip?

A. I wanted to go back.

Q. Did you ever tell them you wanted to come back?

A. Yes, I told them I wanted to come back.

Q. Did they force you to stay or were you willing to stay?

A. They would say there was no use to come back, might as well stay and have a time.

Q. Did you ever start to come back when you were out there in Denver, or get on the train and these men, Thompson and Martin, wouldn't let you come; do you remember of any such thing as that happening?

A. No, I do not.

Q. Did Martin and Thompson give you money while you were out there on this trip?

A. Give me a little bit at a time, \$2 or \$3.

Q. Did you ever ask them for enough money to get back home on?

A. No, I never did ask them.

Q. Did you write to Wallace Thursday while you were out there?

A. Yes, I wrote once or twice.

Q. After you got back to Arkansas City from Denver you stayed there until you come down to Muskogee this time, didn't you?

A. Yes.

Q. Who did you stay with in Arkansas City?

A. Bal Thompson.

Q. Does Bal Thompson live in Arkansas City?

A. No, he lives on a place of his own.

Q. On the north eighty, does he?

A. Yes.

Q. Where did Bal stop in Arkansas City?

A. Commercial House.

Q. Did you want to stay in Arkansas City?

A. (No response.)

Q. Were you willing to stay there all this time?

A. I wanted to come home two or three times.

Q. Why didn't you come?

A. They said I could come any time I wanted to. They didn't hold me.

Q. Did you have enough money to go home on?

A. No.

Q. Ever ask them for money to come home on?

A. Never did ask them. Thompson said they would give it to me, though.

Q. Did those fellows force you to stay there in Arkansas City?

A. No.

Q. Did you feel as though you could leave there any time you wanted to and go down to Bartlesville?

A. Sometimes I did.

Q. Did you feel that if you wanted to go you could, that nobody was keeping you?

A. Yes.

Q. Did Bal stay with you all the time?

A. Yes, I could have come lots of times. When I would get mad—he just kept on promising me that we would come pretty soon, then he would say we would come sometime after the carnival;

and then he said we would come home Monday, and that never did come. And he finally said we would come home next Monday.

Q. Did you and Thompson stay in the same room at the Commercial House?

A. Yes.

Q. With you night and day?

A. Wasn't with me all the time; with me some of the time.

Q. You stayed together there?

A. Yes.

Q. Took your meals together?

A. Yes.

Q. He paid your expenses there in Arkansas City; he paid your hotel bill?

A. Thompson paid it; they give him the money.

Q. Who give him the money?

A. The Company.

Q. And Thompson paid all your expenses?

A. Yes, I suppose it is the Company.

Q. Did Thompson ever tell you that you were not going home; that he was going to keep you up there?

A. No.

Q. Did you see Mr. Harned occasionally while you were in Arkansas City?

A. Yes, I seen him—what is today?

Q. Thursday?

A. I believe I seen him over there Monday.

368 Q. Did you ever ask Mr. Harned or speak to him about sending you back home?

A. No, I never did ask him. He said he come over there on some other business.

Q. What I am trying to get at is this, all the time you were taking these trips and stayed in Arkansas City were you perfectly willing to be away from home, or was somebody keeping you away from home against your will?

A. After I was away from home I thought it would be best for me to stay away, because these other people would be bothering me.

Q. The Test Oil people?

A. Yes.

Q. Did Thompson tell you they would get after you if you went back?

A. No, some other parties told me.

Q. Who were the other parties you mean; do you mean Mr. Harned?

A. Yes—let's see.

Q. What I mean was did Mr. Harned tell you the Test oil people would get after you if you went back there?

A. (No response.)

Q. Do you remember whether he told you that or not?

A. I was trying to think how I heard it.

Q. Is there a dancing platform built on your place over there by Bartlesville?

A. Built on my grandma's.

Q. On the 160 acres south of this south eighty?

A. Yes.

Q. Who built that platform?

A. Ed Smith.

Q. Who is Ed Smith?

A. Fellow lives right southeast of us on Jesse Cox's place.

Q. White man?

A. Yes, sir.

Q. Farmer?

A. Yes, sir.

Q. Did you help him build it?

A. Yes, sir, me and him and another fellow was in it.

Q. Who was the other fellow?

A. Can't prove it by me.

Q. Who paid for the lumber?

A. Smith bought it.

Q. Did these oil men have anything to do with putting up that platform?

A. No, they didn't have anything to do with it.

Q. Do you remember the night when you were at a dance on this platform and come back home and went to Oklahoma City?

A. (No response.)

Q. Were you drinking that night?

A. No.

Q. These men give you any whiskey that night?

A. No.

Q. Didn't you have any out there?

A. I was dancing, I didn't know what was out there.

Q. You didn't know?

A. No, I was just as sober as I am now when I left.

Q. Did this Bal Thompson and Fide Martin ever give you any whiskey?

A. No.

Q. On this trip to Denver and while you were out in Colorado, Manitou and through the west did Bal Thompson or Fide Martin give you any whiskey to drink?

A. No, I would get drinks, I wouldn't get any whiskey, though. I would get beer.

Q. Did these men ever get you drunk?

A. No.

Q. Did they ever try to get you to drink?

A. Sometime; sometime they wouldn't.

Q. When Mr. Harned and Mr. Veasey were over in Oklahoma City did they take you around to see a woman there?

A. No sir.

Q. Never introduced you to a woman in that town?

A. No sir.

Q. How did Veasey and Rowland come to represent you in this contest case at first; did you get them to act as your lawyers?

A. Veasey and Rowland?

Q. Yes?

A. No, the Company got them to act as my lawyer.

Q. The Delakee Oil Company?

A. Yes, sir.

Q. Did you ever agree to pay Veasey and Rowland any money as your attorneys?

A. No.

Q. Did you ever ask them to act as your attorneys?

369 A. No, I never did ask them that time.

Q. You expect to pay them anything as your attorneys?

A. The Delakee was paying them I suppose.

Q. You just considered that they were representing the Delakee Oil Company, did you?

A. Yes, just the same way as with the old lady.

Q. How about Norwood; did you think Norwood was representing you when he came down here to Muskogee, Indian Territory?

A. No, I think he was helping me then.

Q. You thought he was acting for you, did you, have you since come to the conclusion he was acting for somebody else?

A. Yes, I found out later on.

Q. Who did you think he was acting for?

A. The Test Oil Company is what I thought.

Q. Did you agree to pay Norwood anything?

A. No.

Q. Do you know anything about this \$2700.00 that Wallace Thursday got from Heady for this north eighty acres of land?

A. Too hard for me, I don't know anything about that.

Q. You don't know anything about that?

A. No, I do not.

Q. Did Wallace ever tell you part of that money was yours?

A. No, he never did.

Q. What would you like to do about this land now, Sam; nobody represents any oil company here, no lawyers here, just tell us what you would like to do about this land in your own way?

A. The way I would like to do I believe I would be willing to take half.

Q. You had rather take half of the north eighty?

A. Yes, forty acres.

Q. And where would you like to take the rest of your allotment?

A. I think maybe I would like to take forty on the other outside, that is if I can do that, I don't know whether I could do that or not.

Q. Now Sam you understand how the north eighty was cut by the decision, don't you?

A. Now, you mean?

Q. Yes?

A. Yes.

Q. By the decision Heady was to take the north half of the west forty and the south half of the east forty; you were to get the north half of the east forty and the south half of the west forty, do you think it will be best for you to take these twenties

I have described which were awarded to you out of the north eighty and then take the rest of your allotment out of the south eighty?

A. Yes, I will take it if I can get it that way.

Q. Do you think it would be better for you to do that than to take all of the south eighty?

A. I can't get both.

Q. You can't get all of the south eighty and also two twenties out of the north eighty?

A. No.

Q. You are sure you want those two twenties out of the north eighty?

A. Yes.

Q. You would like to have those two twenties out of that north eighty?

A. Yes, if I can get it.

Q. And the west forty of the south eighty which would lie right next to the land in the north eighty which was awarded to you by the decision?

A. Yes.

Q. Sam, if Wallace has \$2700.00 in the bank in Bartlesville which he got from Heady for the sale of that north eighty would you be willing to give back to Heady half of that money in order to keep half of that north eighty as your allotment?

A. I haven't got anything to do with that part of it. The money is not in my hands.

Q. If he has got that money up there would you be willing to give \$1350.00 back to Heady and take those two twenties out of that north eighty?

A. You would have to see him about that. I would be
370 willing to do it—I don't know about him.

Q. You would be willing to do it, if that is up there and belongs to you, would you?

A. Yes, sir.

Witness dismissed.

S. T. Wright, stenographer to the Commissioner to the Five Civilized Tribes, on oath states that the above and foregoing is a full, true and correct transcript of his stenographic notes taken in said cause on said date.

S. T. WRIGHT.

Subscribed and sworn to before me this the 26th day of October, 1906.

[SEAL.]

B. P. RASMUS,
Notary Public.

Department of the Interior,
Commissioner to the Five Civilized Tribes,
Cherokee Land Office.

Cherokee Allotment Contest No. 830.

Land in controversy: S. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$, less 3.08 acres for K. O.
C. R. R. right of way, and S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ Sec. 13, T. 26 N.,
R. 12 E., I. M., containing 76.92 acres.

ELLA E. HEADY, by Her Husband, JOSHUA B. HEADY, Contestant,
vs.
SAMUEL BOB, a Minor, Contestee.

Confession of Judgment.

Now comes the contestee, Samuel Bob, in his own proper person, and requests the Commissioner to cancel and set aside his selection of the land in Controversy and consents that Contestant may have judgment therefor, for the reasons given in his testimony of this date.

(Signed)

SAM. BOB.

— this — day of —, 1906.

W.E.A.

Commissioner.

371 *Witnesses Sworn by W. W. Chappell, a Notary Public.*

SAMUEL BOB, being first duly sworn and examined, testified as follows:

Direct examination.

On behalf of the Commissioner:

Q. What is your name?

A. Samuel Bob.

Q. Where do you live?

A. Bartlesville.

Q. How old are you?

A. 21.

Q. When were you 21?

A. March 4, this last March.

Q. March 4, 1906?

A. Yes.

Q. Are you the Contestee in Cherokee Allotment Contest No. 830, entitled Ella E. Heady against Samuel Bob, a minor?

A. Yes sir.

Q. It appears, on examination of the record in this case, that, on May 5, 1904, Wallace Thursday, as the legal guardian of Samuel Bob, made application for the allotment of said Samuel Bob, for the S. E. 1/4 of the N. W. 4 less 3.08 acres K. O. C. & S. R. R. right of way, and the S. W. 4 of the N. E. 4, all in Section 13, Township 26 North, Range 12 East of the Indian Meridian, and that, on May 17, 1904, Joshua B. Heady made application for the same land for his wife, Ella E. Heady, and filed this contest against you for the same. It also appears that this case has been tried and the judgment has been rendered therein by the Commissioner to the Five Civilized Tribes, awarding the land to Ella E. Heady, the Contestee, from which judgment your guardian appealed to the Commissioner of Indian Affairs, and the judgment of the Commissioner to the Five Civilized Tribes was affirmed, from which decision your guardian also appealed and the Secretary of the Interior modified the decision, awarding the land to the Contestant and authorized a hearing to determine an equitable division of the land. It also appears that a hearing has been had and the case is now pending an equitable division of the land. You know that to be a fact?

A. Yes sir.

Q. Have you been advised as to the status or how the case stands?

A. No.

Q. What is your understanding of the condition of this case at the present time? Of how the case stands?

(No answer.)

Q. Do you know anything about that?

A. No, I don't know.

Q. Now, it appears that you were personally present on April 13, 1906, when this hearing was had to determine how the land should be divided up between yourself and the Contestant in the case. You were present at that hearing?

A. Yes sir.

Q. Did you know what was going on and what that hearing was for?

A. That was a contest, was it not?

Q. For what purpose do you make this appearance today?

372 A. I thought it would be the best idea to change onto the other 80. The other way it would not be making much of anything for either party.

Q. Is it your desire to relinquish this land and give it up to Ella E. Heady?

A. Yes sir.

Q. Why do you want to do that?

A. Because I thought the other 80 lays a little better.

Q. Do you refer to the 80 that lies immediately south of the land in contest in this case?

A. Yes sir.

Q. You also claim to own the improvements upon this 80 south of the land in contest, do you?

A. Yes.

Q. It appears that your guardian, Wallace Thursday, on behalf of

yourself and also acting as guardian for Mary Thursday, designated the 80 lying immediately south of the land in contest as the Delaware surplus holdings of yourself and grandmother, Mary Thursday. Is your grandmother, Mary Thursday, willing that you should be filed on this 80 immediately south of the land in contest?

A. I don't know anything about the old lady.

Q. Is Wallace Thursday willing that you should file on the land south of that in contest?

A. Yes, sir.

Q. Have you talked this over with him since you became of age?

A. Yes sir.

Q. It appears that the 80 acres of land above referred to, which lies immediately south of the land in contest in this case, is described as the N E. 4 of the S. W. 4, less 308 acres K. O. C. & S. R. R. right of way, and the N. W. 4 of the S. E. 4 of Section 13, Township 26 North, Range 12 East of the Indian Meridian. Is it your desire in the event this confession of judgment is approved, to be filed upon this land? The 80 acres lying immediately south of the land which is in contest?

A. Yes sir.

Q. You want that for your allotment, do you?

A. Yes.

Q. Do you know that this case is pending here in this office as to the division of the land in contest between yourself and Ella H. Heady?

A. Yes sir.

Q. You know that do you?

A. Yes.

Q. Do you want the land in contest to be divided up between you and Ella E. Heady.

A. No.

Q. Do you want Ella E. Heady to have it all?

A. Yes sir.

Q. Are you familiar with both of these 80 acre tracts of land you mention?

A. No sir.

Q. Do you know *then*, seen them—been over them and know them?

(No answer.)

Q. Which of these 80 acre tracts would you rather have as your allotment?

A. The south one, I believe.

Q. The south 80?

A. Yes.

Q. For what reason would you rather have the south 80 for your allotment?

A. Better farming land, and oil land too.

373 Q. Did you and your grandmother and Wallace Thursday ever have an agreement before you filed that you should be filed on this 80 right south of the land in contest in this case?

A. Yes sir.

Q. Has anybody paid you anything or offered to pay you anything for making this confession of judgment?

Q. Yes sir.

Q. What have they offered to pay you?

(No answer.)

Q. Has anyone offered you any money for coming down here and doing this?

A. Yes.

Q. How much money?

A. How do you mean—in this here business?

Q. Yes; how much money has anyone agreed to pay you for giving this land up?

(No answer.)

Q. Do you know?

(No answer.)

Q. Do you understand my question?

A. Yes sir; I don't know the name of the company.

Q. What is the arrangement that you got with this company in relation to this land?

A. Oil lease arrangement.

Q. Have you contracted to lease this south 80 to some company in the event you filed on it?

A. Yes sir.

Q. How much have they promised you for a lease on it?

A. Promised me three thousand.

Q. Three thousand dollars?

A. Yes.

Q. Have they offered to pay you anything simply for giving this land up? Did they hire you to give up this north 80?

A. No, sir.

Q. Then the money you are to get is for a lease on the south 80 in the event you are filed on it?

A. Yes.

Q. Have you and Wallace Thursday talked this matter over between you?

A. Yes, sir.

Q. Does he advise you to do this?

A. Yes sir.

Q. Do you do this of your own free will?

A. Yes.

Q. Has anyone threatened you in any way or scared you into doing this?

A. No.

Q. You think it would be to your best interest, do you, to give up this land to Ella Heady and file on the south 80?

A. Yes.

Q. Are you willing that these stenographic notes shall be transcribed and sworn to by the stenographer and used as your testimony in this matter, to be of the same force and effect as if you had signed it?

A. Yes sir.

(Witness dismissed.)

WALLACE THURSDAY, being first duly sworn and examined, testified as follows:

Direct examination.

On behalf of the Commissioner:

Q. What is your name?

A. Wallace Thursday.

374 Q. What is your age?

A. About 66, I think.

Q. What is your post office?

A. Bartlesville.

Q. Are you the legal guardian of Samuel Bob,—were you the legal guardian of Samuel Bob?

A. Why, I was; he is of age now.

Q. You were the legal guardian at the time he was a minor?

A. Yes, sir.

Q. Did you file for him on the land in contest in the Heady-Bob case?

A. Yes, sir.

Q. It appears that, on this date, Samuel Bob has personally made application at this office to relinquish and confess judgment in this contest case of Heady against Bob, and to give the land in controversy therein up to Heady, the contestant, and expresses desire to file on the land immediately south of that in contest in this case. Have you talked this matter over with Samuel Bob in relation to this taking this action?

A. I have not talked about taking the action. I have talked to him, though. It seems to be so cramped up and — don't hear anything and I thought it to be a good step to file on the south 80 and stop this contest, so we will know how we stand. It has been a long time, and we hears nothing and knows nothing, and I thought it to be a good step and we will know what we are doing.

Q. You understand, do you not, that this case is now before this office to determine a division of the land between Bob and Heady?

A. Yes I knew that, but still we did not hear nothing from it for a long time, and I could not tell how the change would go or nothing but I thought if we could get straightened out and everything, by changing that way, it stopped the trouble for us and other people, too.

Q. Do you think it would be to the best interest of Samuel Bob to file him on that south 80?

A. That was my opinion of it.

Q. Which one of the 80's in your opinion, would make the best allotment?

A. They both would make good allotment, so far as the 80 is concerned.

Q. Is one more valuable for agricultural and other purposes?

A. Yes.

Q. Which is the more valuable?

A. The south 80. Biggest part is now in cultivation. All but about 15 acres.

Q. How much of the north 80 is in cultivation?

A. 15 acres.

Q. There was sort of an agreement between yourself and Samuel Bob and your wife before you filed that Samuel Bob should be filed on this 80 and that the north 80 should be sold to Heady?

A. Me and my boy had a talk over it and I thought it was the best myself.

Q. You thought it was best that Sam should be filed on the south 80 before you filed?

A. Yes, sir.

Q. Why did you think it best?

A. We had no talk about it at all, because when I was down at Tahlequah I did not expect to file on it until when I went there. When we was in the house the Commission said we had a right to file it ourselves, and then, to make the filing altogether, I filed Sam on that 80 and myself on the other. Now, I am willing to give up my filing on that 80 and let him have it.

Q. You are willing to give up your filing on the south 80 and let Sam have that?

375 A. Yes.

Q. Which one of this 80 acre tracts is the more valuable for oil purposes?

A. I could not tell you because it takes sometimes a week to go down to where the oil is. Sometimes it looks better but oil is not there. You cannot tell anything about the surface at all. The fact of the thing is when it was bored, the agriculture is no more good, if it was broke, because the oil runs all over the ground and kills the soil out.

Q. Do you know whether Sam Bob leased the north 80 for oil purposes?

A. Why, I think that he did. He done it before he was of age.

Q. He did not after he was of age?

A. I don't know what he done after he was of age, but I think he has, too.

Q. Has he leased the entire 80 in a body, do you think, since he was of age?

A. I do not know. I never heard how he leased it but I found out he had leased it. But then we did not take that lease off of it at all, if we change it. We change him over on the other 80 and let them fix it about the lease.

Q. Have they agreed to lease the south 80 to the same party that had a lease on the north 80?

A. No, I guess not.

(Witness dismissed.)

SAMUEL BOB, being recalled, testified as follows:

Q. Sam have you leased this 80 acres in contest for oil purposes since you became of age?

A. No, sir; promised to, but did not lease it.

Q. Promised to lease it, after the contest was settled?

A. Yes.

(Witness dismissed.)

WALLACE THURSDAY, being recalled, testified as follows:

Q. Which is considered the most valuable for oil purposes?

A. Well I suppose the south 80 is a little.

(Witness dismissed.)

WINIFRED E. AYERS, being first duly sworn, states that she, as stenographer to the Commissioner to the Five Civilized Tribes, recorded the testimony in the foregoing proceedings, and that the above is a true and correct transcript of her stenographic notes thereof.

(Signed)

WINIFRED E. AYERS.

Subscribed and sworn to before me, this 18th day of July, 1906.

[SEAL.]

(Signed)

JOHN E. TIDWELL,

Notary Public.

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DEPARTMENT OF THE INTERIOR.

Commissioner to the Five Civilized Tribes.

Cherokee Allotment Contest No. 830.

ELLA E. HEADY by Her Husband, JOSHUA B. HEADY, Contestant,

vs.

SAMUEL BOB, a Minor, Contestee.

Application to Waive Right to Appeal.

Comes now the Contestee, Samuel Bob, in his own proper person, and hereby makes application to waive his right to appeal from the decision of the Commissioner to the Five Civilized Tribes rendered in the above entitled and numbered cause, on July 17, 1906, as follows:

"That the north half of the southeast quarter of the northwest quarter, less 1.54 acres for K. O. C. & S. R. R. right of way, and the south half of the southwest quarter of the northeast quarter of Section 13, Township 26 North, Range 12 East of the Indian Meridian, containing 33.46 acres, and being a portion of the land in controversy in said cause, be awarded to Ella E. Heady, the contestant therein; that on the payment by or on behalf of the contestee to the contestant, or her duly accredited representative, the sum of \$1,350,

which said payment shall be made in the presence of the Commissioner to the Five Civilized Tribes, on a date hereafter, and after the final decision in this cause, to be fixed by the Commissioner, the south half of the southeast quarter of the northwest quarter, less 1.54 acres for K. O. C. & S. R. R. right of way, and the north half of the southwest quarter of the northeast quarter of Section 13, Township 26 North, Range 12 East of the Indian Meridian, containing 38.46 acres, and being the remainder of the land in controversy in said cause, be allowed to remain a portion of the allotment selection of Samuel Bob, the contestee therein; that, in the event of the failure of the said contestee, Samuel Bob, to make the said payment at the time and in the manner hereinbefore mentioned, said last described land, being the south half of southeast quarter of the northwest quarter, less 1.54 acres for K. O. C. & S. R. R. right of way, and the north half of the southwest quarter of the northeast quarter of Section 13, Township 26 North, Range 12 East of the Indian Meridian, containing 38.46 acres, be awarded to Ella E. Heady, the above named contestant," and hereby consents that said judgment of the Commissioner be final and the case closed. Said contestee hereby expressly waives his right to be awarded the said S. -2 of the S. E. -4 of the N. W. -4 less 1.54 acres for K. O. C. & S. R. R. right of way, and the N. -2 of the S. W. -4 of the N. E. -4 of Section 13, Township 26 North, Range 12 East of the Indian Meridian, on the conditions above named, to-wit, the payment of \$1,350 to the Contestant in the presence of the Commissioner and hereby states that he is not desirous of making said payment, and consents that said last described land may be awarded to the contestant.

(Signed)

SAM BOB.

— this — day of —, 1906.

Commissioner.

377 SAMUEL BOB, being first duly sworn and examined, testified as follows:

Direct examination.

On behalf of the Commissioner:

Q. State your name, age and postoffice?

A. Samuel Bob; 21 on March 4; Bartlesville.

Q. You are the contestee in this Heady-Bob case, are you?

A. Yes, sir.

Q. The notice of the decision in that case, rendered on June 17, 1906, has been served on you today, has it?

A. Yes, sir.

Q. Are you advised that, by that decision, this land is divided up equally between you and Mrs. Heady, upon payment by you to Mrs. Heady of \$1,350; do you know that?

A. Yes, sir.

Q. Do you also know that by that decision, in case you do not pay that \$1,350, all the land goes to Mrs. Heady?

A. Yes, sir.

Q. You also know that you have 20 days from this date to file an appeal in this case to the Commissioner of Indian Affairs?

A. Yes, sir.

Q. Do you want to appeal this case any more?

A. No.

Q. You do not want to take any more appeals in it, then?

A. No.

Q. You are willing that this decision rendered on June 17, a copy of which has been served on you, shall be final? That that shall be the decision in the case without any further appeal?

A. Yes, sir.

Q. Are you willing that the case shall be closed up that way?

A. Yes, sir.

Q. Do you want to pay this \$1,350 to Mrs. Heady as provided in this decision?

A. No, sir.

Q. You are sure that you understand that if you pay \$1,350 you will get half of the land?

A. Yes; I understand that.

Q. Do you want to pay that \$1,350.

A. No, sir.

Q. Can you pay it.

A. Yes.

Q. You are willing that Mrs. Heady, the contestant, should have all of the land?

A. Yes, sir.

Q. That is your desire is it?

A. Yes.

Q. Do you want to take advantage of your right to pay this \$1,350 and get half of the land?

A. No, sir.

Q. Do you decline to pay this \$1,350; that is, do you refuse to do it?

A. I don't want to pay it.

Q. Do you intend to pay it? Are you willing to pay this \$1,350?

A. No, sir.

Q. In the event this case is closed up and all this land is given to Mrs. Heady, as you stated you desire done, have you got any other land to take as your allotment?

A. The south 80.

Q. You have the 80 immediately south of this have you?

A. Yes, sir.

Q. Are you going to make application for that south 80, if this is approved, and this case is closed?

A. Yes, sir.

Q. It appears that this 80 immediately south is described as the N. E. -4 of the S. W. -4 and the N. W. -4 of the S. E. -4 of Section 13, Township 26 North, Range 12 East of the Indian Meridian. That

is the land that has been designated as your Delaware-Cherokee surplus holdings?

A. Yes, sir.

Q. You are a Delaware-Cherokee, are you not?

A. Yes, sir.

378 The records of this office show that Samuel Bob is a Delaware-Cherokee citizen and entitled, under Acts of Congress of April 10, 1904, April 21, 1904, and March 3, 1905, to dispose of improvements upon Delaware surplus lands, and that the land last above described has been designated as the improved surplus holdings of Samuel Bob, and his grandmother, Mary Thursday.

Q. Is Wallace Thursday, the guardian of Mary Thursday, willing that you should file on this south 80?

A. Yes, sir.

Q. Do you want to bring that contest right away? Do you want to make application for the south 80 right away?

A. Yes, sir.

Q. Are you willing that these stenographic notes shall be transcribed and sworn to by the stenographer and used as your testimony in this matter, to be of the same force and effect as if you had signed it?

A. Yes.

(Witness dismissed.)

Winifred E. Ayers, being first duly sworn, states that she, as stenographer to the Commissioner to the Five Civilized Tribes, recorded the testimony in the foregoing proceedings and that the above is a true and correct transcript of her stenographic notes thereof.

(Signed)

WINIFRED E. AYERS.

Subscribed and sworn to before me this 18th day of July 1906.

[SEAL.]

(Signed)

JOHN E. TIDWELL,

Notary Public.

379 DISTRICT OF COLUMBIA, ss:

I, Seabury G. Quinn, being first duly sworn, depose and say: That I carefully examined the record in Cherokee Allotment Contest No. 926, entitled, Annie M. Martin, Contestant, vs. Wallace Thursday and Jesse L. Harnage, Contestees, and also the record in Cherokee Allotment Contest No. 830 entitled Ella E. Heady, by Joshua B. Heady, her husband, Contestant, vs. Samuel Bob, a minor, Contestee, the latter having been made a part of the record by stipulation of counsel in the aforesaid case of Martin vs. Harnage; that the foregoing is a complete record of the testimony adduced at the hearings of said causes and of the complaints on which the hearings were conducted, and of the final decisions rendered in each of the foregoing causes; that I carefully compared the foregoing transcript with the original transcript of record on file in the office of the Secretary of the Interior, and that the same is a true and correct and

an examined copy of the foregoing papers to which this certificate is attached and of each and every of said papers.

(Signed)

SEABURY G. QUINN.

Subscribed and sworn to before me this 22nd day of December, A. D. 1908.

[SEAL.]

HAZEL NORDEMAN,

Notary Public, D. C.

My commission will expire Nov. 1/09.

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Ex. J.

Return to James K. Jones.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
BARTLESVILLE, INDIAN TERRITORY, NOVEMBER 26, 1906.

Filed Jan. 27, 1910. L. G. Disney, Clerk U. S. Circuit Court,
Eastern Dist., Okla.

In the matter of the selection of an allotment for Samuel Bob, a citizen by blood of the Cherokee Nation, and an investigation incident to Cherokee Allotment contest No. 830, entitled Ella E. Heady, Contestant, versus Samuel Bob, Contestee.

Contestant, Ella E. Heady, represented by W. W. Hastings, Zevely & Givens, George & Julian, and J. H. Hucklberry.

Contestee, Samuel Bob, represented by Veasey & Rowland, and William T. Hutchings.

381 LESLIE COOMBS, being duly sworn by Commissioner Tams Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. State your name?

A. Leslie Coombs.

Q. Age and postoffice address?

A. Fifty-four; Bartlesville.

Q. Are you connected in any official capacity with the Delokee Gas & Oil Company?

A. Yes sir.

Q. In what capacity?

A. Secretary and Treasurer.

Q. Do you have custody of the books of the Company?

A. Yes.

Q. I will ask you to look at those stock books, and state to the Commissioner whether or not that represents all the stock certificate books of the Delokee Gas & Oil Company?

A. Yes sir, I think they do.

Q. What is the authorized capital stock of the Delokee Gas & Oil Company?

A. One million dollars.

Q. Upon what basis was that stock sold at first?

A. 10 cents.

Q. Was the stock sold at first as fully paid up and non-assessable?

A. Yes, it was at first.

Q. Did the regulations of the Department of the Interior require a change in the character of the stock so issued, Mr. Coombs?

A. Yes sir.

Q. What was the nature of that change?

A. Well, we had to make the stock assessable.

Q. Do you recall, from the records of the corporation, about how many shares of stock had been issued, approximately, Mr. Coombs?

A. I think it has all been issued except five thousand shares—five thousand and some shares been issued.

Q. What is the par value of each share?

A. One dollar.

Q. Now under the new management entered into by the Company, how much on each share was regarded as paid in?

A. Four and a fraction cents.

Q. The balance remaining subject to the call of the board of directors?

A. Yes sir.

Q. Do your records disclose that I, James A. Veasey, am or was a stockholder in the Delokee Gas & Oil Company?

A. You was at one time.

Q. Turn to the certificate there and let the Commissioner read that into the record,—Is that the stock certificate issued to me?

A. Yes sir.

By Mr. Rodgers, on behalf of the Commissioner:

This indicates that James A. Veasey is the owner of five hundred shares of the capital stock of the Delokee Gas & Oil Company, is dated October 3, 1904, and signed by James Gray, Vice-President, and Leslie Coombs, President.

On the back appears an assignment of said shares by James A. Veasey to Leslie Coombs, dated June 9, 1906.

Mr. Veasey: To whom is the assignment made, Mr. Rodgers?

Mr. Rodgers: Leslie Coombs.

By Mr. Veasey:

382 Q. The certificate just read indicates that I transferred five hundred shares of stock to you on June 9, 1906, is that true?

A. Yes sir.

Q. What consideration was paid by you for that transfer?

A. Twenty dollars.

Q. What was that twenty dollars supposed to represent on that particular certificate of stock?

A. Price per share at the rate of four cents per share.

Q. Under the arrangement which the Company afterwards entered into ninety-six cents was subject to the call of the board of directors?

A. Yes sir.

Q. Have I ever held any other stock in the Delokee Gas & Oil Company?

A. No sir.

Q. Do the records so show, as you have just testified?

A. Yes sir.

Q. Are you acquainted with Jess L. Harnage of Tulsa, Indian Territory?

A. Yes sir.

Q. How long have you been acquainted with him?

A. Been acquainted with him since sometime in 1903, I don't know just what time.

Q. Is Mr. Harnage a stockholder in the Delokee Gas & Oil Company, or has he ever been?

A. No sir.

Q. Do the records so show?

A. Yes sir.

Q. Reverting to my connection with the Company, have I ever held any official position, either as director or otherwise?

A. No sir.

Q. The records so show it?

A. Yes sir.

By Mr. Bixby:

Q. Do you know whether or not Mr. Rowland has ever owned any stock in the Delokee Gas & Oil Company?

A. Never has.

Q. You are testifying as to what the records show, so far as you know?

A. Yes sir.

Cross-examination.

By Mr. Huckelberry:

Q. The stock is one million dollars capital, is that correct?

A. Yes sir.

Q. Consisting of one million shares, each of the par value of one dollar?

A. Yes sir.

Q. On that par value there had been paid into the treasury, four and one-half cents?

A. Something like that.

Q. All the stock has been issued, has it?

A. No, five thousand and some shares never been issued;—little over five thousand shares still in the treasury never been issued.

Q. Have you a stock ledger, showing these transactions?

A. Yes sir.

Q. You haven't that ledger here?

A. Have it in the office; can get it.

Q. This assignment by Mr. Veasey dated the 9th day of June, 1906, is that the date that the transfer was made on the books of the Company?

A. Yes sir.

Q. Have you a book showing that transfer?

A. Yes sir, we have.

Q. This is what you have referred to as showing it?

A. Well, we could show that in the office by correspondence there.

383 Q. Have you a book in your office that would show this,—would the stock ledger show this?

A. I don't believe our books would show this except the certificate; the certificate shows when it was reissued.

Q. You have no record except the certificate itself and the new certificate issued in its place, have you?

A. I doubt whether our records would show it except the certificate. This book will show it.

Q. Turn to it, please? (Indicates certain part of the book).

Q. Did Mr. Veasey own any stock in the company prior to October, 1904?

A. Didn't own any before the certificate shows. That is all he ever owned.

Q. I noticed that your stock certificates are marked non-assessable, fully paid up, is that correct, or is there a balance due the Company from Mr. Veasey on this stock of four hundred and ninety some odd dollars?

A. No, I just paid him so much for his stock.

Q. How much was due on this stock to the Company?

A. Wasn't anything due the Company.

Q. This stock was fully paid up?

A. Yes sir. We made a change, I don't remember just the time it was made,—Mr. Gray—

Q. Didn't you tell me a moment ago that there was nothing due from Mr. Veasey to the Company?

A. I was figuring on the first basis,—the basis that we started out on.

Q. When this share of stock was issued to Mr. Veasey, he paid for it and owned it without the Company having any interest in it, other than the right to further assessment from him?

A. I don't remember what time, just how it was at the time that was issued, but then we made a change afterwards.

Q. At the time you bought the stock, did Mr. Veasey owe anything on the stock?

A. I suppose he would under our arrangement.

Q. Did he, or did he not, owe anything?

A. I think he could be assessed of course.

Q. Does the books of your Company show that that is a paid up certificate of stock, or do they show something due on that share of stock?

A. No, as the subscription appears there, there would be some-

thing due, that is provided we wanted to make a further assessment.

Q. Do your books show that there was anything due on that certificate of stock from James A. Veasey when he sold it to you?

Mr. Veasey: Objected to, because we will submit the books for the inspection of the attorneys. This is asking for a conclusion by the witness. If there is anything, the books will disclose it.

Mr. Huckleberry: I am asking whether or not there is anything due on this stock.

Mr. Bixby (to witness): You may answer the question, if you know.

A. Well, of course, whoever held the certificate knowed there was something on the stock.

384 By Mr. Huckleberry:

Q. Is there any book showing that James A. Veasey owed the Company anything for this particular share of stock?

A. No, not that I know of.

Q. Your records do not show James A. Veasey indebted to the Company for that certificate of stock?

A. No sir.

Q. Does your ledger, or have you a ledger showing that you are indebted to the Company for any amount of money unpaid on that certificate of stock?

A. Yes, the records will show.

Q. Have you any book of any kind showing that there is an amount unpaid on that certificate of stock?

A. Yes, the records will show.

Q. Have you any book of any kind showing that there is an amount unpaid for stock from you to the Company?

By Mr. Veasey: We submit that this line of examination is unfair. We are willing to submit the records and let the records be made a part of the testimony in this case to show for themselves.

Mr. Bixby: I think the question is proper.

A. (Witness) You can have our records.

By Mr. Huckelberry:

Q. Have you a record showing that you owed the Company anything for that stock,—have you such a record?

A. No, I don't owe them anything now; we can make assessment on it though.

Q. Then that share of stock is considered paid up, and is subject to such assessment as the board of directors might levy, is that correct?

A. I suppose so.

Q. How did you happen to buy these shares from Mr. Veasey?

A. Why I bought considerable stock,—just like I bought anybody else's stock. Bought seventy-three thousand shares from another party,—bought from different parties.

Q. How did you come to buy this particular stock from Mr. Veasey?

A. Because he wanted to sell it, just like a great many other small stockholders.

Q. Was that all the conversation between you on the subject?

A. Yes, I don't remember anything else. A great many only had a little stock wanted to sell it.

Q. He told you that was the reason he wanted to sell?

A. No, I don't know.

Mr. Veasey: We submit that is entirely unwarranted.

Mr. Huckleberry:

Q. Mr. Coombs, I notice on this certificate issued to you that it was originally made out to James A. Veasey, can you account for that,—and afterwards that was scratched out and your name inserted over it?

A. Just happened to write the wrong name in the wrong place, I suppose.

Q. The original certificate number seems to be 173, number of original shares, 500, number of shares transferred, 500, is that correct?—Under the new arrangement you told us about awhile ago?

385 A. That is the way we kept our books.

Q. That conforms then with your original entry?

A. I suppose so.

Q. How did you pay Mr. Veasey that twenty dollars?

A. I don't remember whether I paid it to him in cash or check.

Q. What was the market value of the stock at that time?

A. No particular market.

Q. What was the highest price you ever heard of the stock selling for?

A. Sold all the way from three cents a share up to fifteen at different times.

Q. Along in the summer, say, what was the highest price?

A. It sold during this summer anywhere from three to fifteen cents.

Q. A man hard up sold for less?

A. Yes sir.

Q. What is the reason Mr. Veasey wanted to sell? Was he hard up too?

A. I suppose so, he wanted to sell.

Q. Any other reason mentioned by Mr. Veasey as to why he wanted to sell?

A. I don't remember any other reason.

Q. In regard to Mr. Jess Harnage, is not Mr. Jess Harnage interested in some way with the Delokee Gas & Oil Company?

A. No way as I know of.

Q. Had the Delokee Gas & Oil Company had any business transaction with Mr. Jess Harnage?

A. I don't know that they have particularly.

Q. Well, have they?

A. I don't recall anything particularly they have had.

Q. Don't you know that they contracted with him for a lease on the south eighty?

A. Oh, yes we have a lease.

Q. Then, you have had some business transactions with him?

A. Yes, I didn't know what you had reference to.

Q. This land on which you,—Mr. Jess Harnage has the land immediately south of this land in controversy?

A. Yes.

Q. When was that lease executed to you?

A. Can't say now.

Q. About when?

A. I don't remember; of course, I can get that up for you. I am poor on dates or anything of that kind.

Q. What consideration, if anything, was paid by the Company to Jess L. Harnage for the execution to the Company of that lease?

A. I don't think there was anything only the royalty.

Q. One-tenth royalty?

A. I think so.

Q. And no bonus payments?

A. No sir.

Q. I will ask you whether or not there was any consideration went from the Company to Mr. Harnage for the execution of that lease?

A. Nothing that I know of.

Q. I will ask you to furnish us during the day, the date of that lease, if you please.

Mr. Veasey: The lease is on file.

By Mr. Huckleberry: You can furnish us the date of it.

Q. Has there been any other transaction between the Company and Harnage?

A. No sir.

Q. Who negotiated this lease on behalf of the Company with Mr. Harnage?

A. I don't remember what particular member of the Company.

Q. Have you no recollection on that subject?

A. No sir, I do not.

386 Q. Isn't it a matter of fact that the negotiation was made with Mr. Harnage by Mr. Veasey?

A. I suppose some member of the Company made it; I can't say about it.

Q. Is it not your understanding Mr. Veasey made that contract for the Company?

A. I can't say about it. I don't remember the transaction at all. He might have had something to do with it.

Q. Wasn't there also a contract between Mr. Harnage and the Company entered into prior to the execution of this lease for the lease?

A. I don't remember about it.

Q. Did you ever hear of such a contract?

A. No sir, I don't recall to my mind that it was;—might have been, but I have no recollection of it.

Q. Have you such a contract in your possession as custodian of the books of the company?

A. I don't remember anything about it.

Q. That was a small matter, a lease on that south eighty, so you didn't pay particular attention to it?

A. Well, I don't remember about this question you ask me. We are willing to produce what we have on the subject. A great many things come up.

Q. Do you know how Jess L. Harnage happened to file on this south eighty?

A. No, I can't tell you.

Q. Did you ever hear from any member of the Company or Mr. Veasey how that occurred?

A. I may have heard things, I hear a great many things I don't remember.

Q. Have you now no recollection whatever on that matter?

A. No, I don't have any positive recollection about anything.

Q. Give us such recollection as you do have?

A. I can't state anything positive about it, because I don't remember.

Q. Who is the active manager of the Delokee Gas & Oil Company?

A. Mr. Gray is the field manager.

Q. Who has been during these years in charge of most of the affairs of the Company, is it not yourself?

A. I have had charge of part of it,—different members of the company.

Q. Do you mean to tell the Commissioner that about as important a matter as the execution of a lease on the south eighty, that you know nothing whatever about it?

A. I know he made a lease like that, but we had a great many other leases.

Q. You have no idea whether there was any bonus paid him?

A. Our leases wasn't worth much about that time.

Q. Do you mean to say a lease wasn't worth much when that lease was taken?

A. Way back then?

Q. I say when that particular lease was taken, do you mean to say it was of no value?

A. No, I didn't say it was of no value; didn't say any lease was of no value.

Q. Wasn't you also out there with Jess Harnage to put some posts around that south eighty?

A. Yes, I helped put some posts around it.

Q. Who did you help do that?

A. Mr. Evans,—

Q. Preacher Evans?

A. Yes, and myself,—I don't remember whether Gray was there or not.

Q. Was Mr. Harnage there?

A. I am not positive; been posts drove around there several times when I wasn't present.

Q. Was Mr. Harnage present when those posts were driven there, when you were driving those posts there?

A. I am not positive about that; I don't think he was.

Q. Why were you driving those posts, Mr. Coombs?

(No answer.)

387 Q. Can't you answer that?

A. I suppose I was taking possession of the land, provided Wallace Thursday didn't want all the land.

Q. Well, why were you helping drive those posts,—you were not a common laborer employed at that time, were you?

A. No sir.

Q. Well, why were you out there driving those posts?

A. I suppose for protection of that land, I don't know anything else.

Q. Protection of the land for whom?

A. Mr. Harnage. I suppose I just happened with the other men there.

Q. They were all members of the Delokee Gas & Oil Company?

A. No, I think people drove posts there that were not members.

Q. Tell me one?

A. I don't remember the parties' names, but then there have been posts driven at different times.

Q. I mean at the time you were there, who was there besides members of the Delokee Company?

A. Two parties helped haul the posts there.

Q. They were employed by the Delokee Company, were they not?

A. Employed by Mr. Harnage.

Q. Why were you and the other members of the Delokee Company out there assisting in driving those posts?

A. Just out there simply helping with the other men. I don't remember the circumstances now that caused us to go down there.

Q. When was that you drove those posts?

A. Can't tell you about the date of that either.

Q. Are you in the habit of going out on a man's farm and helping people drive posts around a part of it?

A. I have done such things.

Q. More than this particular time?

A. I don't remember that I have here.

Q. You have in other countries?

A. Yes sir.

Q. Where you were driving those posts, was not that Wallace Thursday's farm?

A. Yes sir.

Q. Did you have permission from Wallace Thursday to drive those posts there?

A. Yes sir.

Q. Did he tell you to do it?

A. He was there and knew all about it when the posts were driven, and he thoroughly understood it.

Q. Thoroughly understood what?

A. That we were driving those posts and why they were driven.

Q. Tell us what they were driven for?

A. For Mr. Harnage; I told you that in the first place.

Q. Wallace Thursday consented for you to drive those posts for Mr. Harnage?

A. Yes sir, he was there.

Q. Was that before or after you got your lease?

A. I can't recall that part of it,—can't say.

Q. Isn't it a matter of fact that you simply told Wallace that you were driving those posts in order to protect him?

A. Never heard of any such thing.

Q. I will ask you if they were not Wallace Thursday's posts that were driven in and around that south eighty?

A. I think some of the posts were gotten from Wallace.

Q. Was Jess Harnage paying Wallace Thursday anything for the right to take posts off of that piece of land?

A. Not that I know of.

Q. Did you ever hear he was?

A. Never heard he paid him any money.

Q. Jess Harnage then paid no money for taking possession of that land, and your Company paid no money to Harnage for the execution of the lease to you?

A. No sir.

388 Q. Was that before or after Wallace Thursday was at Tahlequah to select allotments for Sam Bob and himself?

A. I can't state that part of it, whether it was before or after.

Q. Several members of your Company were at Tahlequah when Wallace went, were they not?

A. I think they were; I wasn't there myself.

Q. You recall the occasion when they went, don't you?

A. Yes, I knew they were gone.

Q. The Delokee Company had employed Mr. Veasey to look after the interests of Wallace Thursday?

A. Employed Mr. Veasey to look after the interests of the Company.

Q. Didn't you employ Mr. Veasey to look after the interests of Wallace Thursday and Sam Bob?

A. I don't remember that we ever employed him to look after Wallace Thursday's interests.

Q. Then, Mr. Veasey's employment, as you understood it, was to look out for the interests of the Company?

A. I don't remember about that.

Q. How many shares of the capital — of the Delokee Gas & Oil Company do you own?

A. I think the books show I own one hundred and seventy-six thousand shares.

Q. Do you own any more than what the books show?

A. No sir.

Q. Do you own any less than what the books show?

A. I don't think I do.

Q. Will you produce to us the check, or can you produce to us a check, paying for any of these transactions down there?

A. Which transactions do you mean?

Q. With Bob and Wallace Thursday growing out of this taking possession by Jess L. Harnage?

A. No, I don't know that I can.

Q. How did you pay Mr. Veasey that twenty dollars,—cash?

A. I don't know whether I paid it in cash or check.

Q. You can produce the check, showing any payments, can you?

A. No, I don't know.

Q. I wish you would see if you can produce such a check.—What bank were you doing business with at that time?

A. Two banks, Bartlesville National and Citizens Bank & Trust Company.

Q. Didn't you pay accounts in your business through the bank?

A. I did sometimes, and sometimes I paid money. I don't remember how that was made.

Q. Mr. Coombs, it seems you own something over one hundred and seventy-six thousand shares of the capital stock of this Company and have been Secretary and Treasurer all the way through, do you mean to tell the Commissioner that you have no knowledge of the details of the transactions between the Company and Jess L. Harnage in reference to the lease on a valuable tract of land like the south eighty?

A. I don't remember anything particular about it. I know we took a lease.

By Mr. Veasey:

Q. Mr. Coombs, was this sale of that stock from me to you absolute without any qualifications?

A. Yes sir.

Q. No strings to it at all?

A. No sir.

Mr. Zevely: I object to the counsel further leading this witness; you have seen he is a very unwilling witness for us.

389 Mr. Bixby: I think it is proper.

By Mr. Veasey:

Q. Have you been connected with the Delokee Gas & Oil Company, how long?

A. Ever since its organization.

Q. Approximately when was it organized?

A. I think May 14, 1903,—as well as I remember.

Q. What was the first contract, if any, that the Company had with Wallace Thursday respecting a lease on his prospective allotment, and Mary Thursday and Sam Bob's allotments?

A. The first contract was to pay Wallace eight hundred dollars.

Q. For what?

A. Three allotments, his wife's and Sam Bob's and his own.

Q. Embracing how many acres?

A. Three hundred and twenty.

Q. Is that any part of the land in controversy?

A. South 80.

Q. What was the remainder of the land to be included in that contract?

A. Eighty acres south of the one hundred and sixty acres his wife filed on.

Q. In what year was that contract made, do you know?

A. Just about the time of the organization,—would be 1903. I don't remember the dates. I didn't make the contract myself.

Q. Did you have knowledge the contract was made?

A. Yes sir.

Q. Do you remember when Wallace Thursday filed for himself, Sam Bob and Mary Thursday, approximately?

A. I don't remember exactly, some time after this contract though.

Q. In what year was it?

A. I can't say whether it was in 1904. It was some time after this contract.—I am poor on dates.

Q. Do you remember the month, or time of the year?

A. No sir, I can't tell you the month.

Q. Do you remember about the time Wallace Thursday made the sale which is the subject of this controversy?

A. Yes sir.

Q. Were any moneys paid Wallace Thursday on this contract for the three hundred and twenty acres of land, including the prospective allotments of himself, Sam Bob and Mary Thursday between the time of making the contract in 1903, and the supposed sale in April, 1904?

A. Yes sir.

Q. Do you know how much money was paid?

A. I don't know exactly; I think forty-five or fifty dollars paid one time, and two hundred paid at another.

Q. That was before the sale?

A. Yes sir.

Q. Before Wallace Thursday made a sale which was subject to that action?

A. Yes sir.

Q. Did you have any personal knowledge that Wallace Thursday's citizenship was in doubt?

A. I heard it was. Didn't know whether it was doubtful or not,—of course; we know it was doubtful, too; we knew that any of the inter-married people were doubtful as far as that was concerned.

Q. Who conducted, if you remember, most of the negotiations between the Delokee Gas & Oil Company and Jess Harnage respecting filing on the south eighty, and the conditions under which that filing should be made, do you remember that?

A. It must have been yourself.

Q. Did you or any member of the Company conceive the plan, according to which, Jess L. Harnage filed on that south eighty,—did you advise the plan?

- 390 A. No sir, I didn't do it.
 Q. Whose directions, if any, did you follow?
 A. They followed your directions.

Q. Are you acquainted with the details that were arranged between the Company and Jess Harnage through me respecting the nature of his filing and the way, if any, the rights of these other people were to be protected?

A. Yes, I know there was a contract made between Wallace Thursday and Mr. Harnage in regard to the protection of Sam. If Sam lost any part of the north eighty he was to have the south eighty to file on.

Q. Who prepared that contract, do you know?

A. I think you prepared it.

Recross examination.

By Mr. Huekelberry:

Q. When was that contract prepared by Mr. Veasey?

A. Well, it was prepared over at Nowata; I don't remember the dates. They were over there with Mr. Glass and somebody else.

Q. Why wouldn't you answer the questions propounded by me, which was almost exactly like Mr. Veasey put to you, about these things and the details,—Didn't I ask you whether Mr. Veasey made this contract, and didn't you tell me you didn't know who did?

A. No, I didn't remember at the time.

Q. As soon as Mr. Veasey asked you, you remembered it?

A. No, no, sir.

Q. This contract was entered into at Nowata in the presence of Mr. Glass?

A. Mr. Glass and somebody else.

Q. You were present when that contract was signed?

A. Yes.

Q. Why didn't you answer that question awhile ago?

A. I didn't understand you to want that.

Q. That was done when you and several other members of the Company were over at Nowata getting a lease from old lady Thursday?

A. I don't remember.

Q. Was it at the same time you were having Wallace Thursday get out letters of guardianship for Sam Bob?

A. I can't say what time it was. We can produce the contract which will show for itself.

Q. Have you it?

A. Well, it is where it can be had.

Q. Where is it?

A. I don't know whether it is down at the office or up at our office.

Mr. Veasey: Here is the contract.

Mr. Huckelberry:

Q. This seems to have been dated 21st day of June, 1905, is that the contract you refer to?

A. I suppose it is; the one they witnessed over there.

Q. See if that is the one you have been testifying about (hands witness paper)?

A. That's the one.

Q. Is that the contract?

A. Yes.

Mr. Veasey: The witness testified he didn't know where the contract was. I want the record to show I produced it.

391 Mr. Bixby: Al- right.

By Mr. Huckelberry:

Q. Reverting back to the time you were driving posts for Mr. Harnage, can you give me the year in which that was?

A. No, I can not.

Q. It was in the year 1904, wasn't it?

A. I don't know whether it was 1903 or 1904.

Q. In one or the other of these years, wasn't it, 1903 or 1904?

A. Yes, sir.

Q. It was something like a year, wasn't it, before the execution of the contract you refer to?

A. I don't remember how long.

Q. This contract is dated in June, 1905, it must have been a year after, wasn't it?

A. I don't know; some time afterwards.

Q. Then, at the time you were out there driving those posts there was no contract between Jess L. Harnage and Wallace Thursday negotiated by Mr. Veasey?

A. I don't suppose there was any written contract.—There was an understanding then.

Q. What was that understanding?

A. I can't tell you.

Q. Why not?

A. Because I don't know.

Q. Didn't you tell Mr. Veasey awhile ago, that you were acting under the directions of Mr. Veasey?

A. I said most of these negotiations took place through Mr. Veasey.

Q. Didn't you tell Mr. Veasey you were acting under the directions of Mr. Veasey, driving the posts?

A. I don't know that I did tell you anything of that kind. I don't think I did.

Q. What was your understanding of the contract when you were driving those posts?

A. That contract was between Mr. Harnage and Wallace Thursday. I suppose Mr. Harnage can testify about that.

Q. What was your understanding?

A. My understanding was he had an understanding with Wallace he was to have that land provided he didn't, nor Sam didn't, need the land. Sam was protected all the way through.

Q. That was your understanding when he filed here?

A. That was my understanding.

Q. Why were you acting under the advice and direction of Mr. Veasey at that time?

A. Mr. Veasey was our attorney, of course, at that time.

Q. And also a member of the Company at that time?

A. I don't think he was at that time.

Q. Did he own the share of stock you have been testifying about?

A. Not at that time.

Q. Did this transaction take place before Mr. Veasey got this certificate of stock for five hundred shares?

A. I don't remember; I am satisfied he didn't have the stock that far back.

Q. Something has been said in regard to what was to be paid Wallace, eight hundred dollars as a bonus on three hundred and twenty acres of land?

A. Yes, sir.

Q. How much have you ever paid him, all told?

A. We will show that here today; we have got it all in figures.

Q. Your interest in the Harnage transaction was to see that the Delokee Company was to get a lease?

A. Of course, the Company was to get a lease. We have a lease on the land now.

392 Q. Harnage was just a man the Company was using to get a lease on the south eighty?

A. I suppose Mr. Harnage was his own man.

Q. And the Company was using him to get hold of the land?

A. Taking his lease just like we would any other lease.

By Mr. Veasey:

Q. You are familiar with the circumstances surrounding the sale of that north eighty?

A. Yes sir.

Q. What steps were taken by this Company in regard to the prospective interests of the Company and Sam Bob as disturbed by that sale?—Did you employ counsel?

A. Yes sir.

Q. Who?

A. Veasey.

Q. Was that contract for the sale, or otherwise?

A. I think it was.

Q. Was that before the land office opened?

A. The land office was open.

Q. Do you remember when the land office opened in 1904,—it had been closed,—after an interval?

A. Yes sir.

Q. About when was it?

A. I can't remember about that time.

Q. Was I employed before that time or afterwards, if you remember?

A. Before it opened, you mean?

Q. Yes, before it opened?

A. I think so.

Q. What was I employed to do?

A. You was to look after the interests of the Company and also Sam Bob's interests. We agreed to bear the expenses in taking care of his interests.

Q. His interests in what?

A. In his land.

Q. Did that contemplate taking care of the contest we were anticipating?

A. Yes sir.

Q. Who was to pay the expense of my employment?

A. The Company.

Q. Has the Company done so?

A. Yes, we have paid part of it.

Q. Has Sam Bob paid anything?

A. No.

Q. Wallace Thursday pay me anything?

A. No sir.

By Mr. Huckelberry:

Q. How do you know they haven't paid him anything?

A. I don't know of my own knowledge; I mean of my own knowledge I can't state.

Q. You can't do it unless Mr. Veasey asks you, can you?

Mr. Rodgers, on behalf of the Commissioner: The contract referred to by the witness will be marked Exhibit A, and later identified and introduced into the record.

Q. Are Veasey & Rowland at present employed by the Delokee Gas & Oil Company?

A. Yes sir.

Q. Can you identify a little more nearly the exact time when they were employed in this connection?

A. I cannot. Mr. Rowland wasn't here at first. I am a poor hand on dates.

393 Q. Do you remember when Sam filed on this land?

A. I remember when he went down there; don't remember the dates.

Q. Mr. Veasey was attorney for the Delokee Gas & Oil Company at that time?

A. Yes sir.

Q. How long before that time had he been employed?

A. I can't say.

Q. Month, two months, six months?

A. I can't say about that.

Q. Has Mr. Veasey, or the firm as it now is, been employed continuously since that time as its attorney?

A. Yes sir.

(Witness dismissed.)

JAMES A. VEASEY, being duly sworn by Commissioner Bixby, testified as follows:

Statement.

I am thirty years old; an attorney by profession. I am a member of the law firm of Veasey & Rowland, which is representing Sam Bob in the contest case and in the investigation which is now pending before the Dawes Commission.

In April, 1904, I was practicing law at Tahlequah, Indian Territory. About the 5th or 6th of April, of that year I was requested to come to Bartlesville to confer with the directors of the Delokee Gas & Oil Company about a matter. Previous to this, I knew nothing of the Delokee Gas & Oil Company, nor had I any personal acquaintance with any member of the Company, or with Wallace Thursday or with Sam Bob. I met with several of the directors of the Company and Wallace Thursday in the office of the Delokee Gas & Oil Company about dusk, one evening in April, which must have been between the 5th and 10th of that month. At this meeting my attention was first called to the transaction which has resulted in this litigation. I learned that Wallace Thursday had been in possession of about three hundred and twenty acres immediately south of Bartlesville—

Mr. Hastings: We desire to object to the statement and speech by the attorney upon facts, not within his own possession, but upon facts that he claims to have learned through the Delokee Company upon the occasion stated, that being hearsay, argumentative, irrelevant and immaterial, and ask that he confine himself to facts within his own knowledge.

Mr. Veasey: This is introductory to this question.

Mr. Bixby: Make your statement.

394 Mr. Veasey: Both Wallace Thursday and the members of the Company at this meeting told me that there has been an arrangement between the Company and Wallace Thursday for an oil lease on the entire three hundred and twenty acres of land, and that Wallace Thursday on the first day of April of the year mentioned had disposed of the improvements in an attempted sale to Ella E. Heady. Wallace Thursday at that meeting told me that the sale was induced by certain persons coming to him and telling him that he would unquestionably lose his part of the land on account of his citizenship, which was then in doubt, and that it was upon the strength of these reasons he made the sale in the first place; that he sold the north eighty because he wanted Sam and the old lady to be together. I got into the case sufficiently, by information from him, to determine me upon two lines of defense or offense in the contest case which was anticipated by reason of that attempted sale, as we intended to resist it. First, the fraud that was practiced upon the old negro, and secondly, upon the fact that he owned no part of the improvements upon the lands in controversy, but that the incompetent persons whom he represented

had a trust in that property by reason of their money having paid for it.

At this meeting an agreement was made among Wallace Thursday, myself and the Delokee Gas & Oil Company, that I should attempt to protect the Delokee Gas & Oil Company in its lease of this entire tract of land, and also protect the Thursday family in their allotments of this entire tract. The Delokee Gas & Oil Company was to pay all the expenses in connection with it, and I was to prosecute any possible contest case that might grow out of that sale.

I don't recall that I saw Wallace Thursday again or any member of the Delokee Gas & Oil Company until the opening of the land office in May, 1904, but at this first meeting it was agreed that Wallace Thursday should file Sam Bob on the north eighty, the most valuable,——

Mr. George: Was that in writing?

Mr. Veasey: It was not——

To protect the land in an entire body. Wallace Thursday saying it had been his original intention to file Sam Bob on that eighty, but that he changed when he wanted to keep the allotments of his wife and stepgrandchild together.

When Wallace Thursday, in company with several members of the Delokee Company reached Tahlequah at the opening of the land office there was a definite understanding.

Mr. Hastings: I am inclined to think that we ought to ask for the rule. We didn't at the start, but I believe we shall ask that the witnesses be placed under the rule.

395 Mr. Bixby: All witnesses who expect to testify in this case, please retire from the room.

Mr. Veasey: — that Sam Bob was to be filed on the north eighty Wallace Thursday on the south eighty and Mary Thursday on the one hundred and sixty acres immediately south of the two tracts first mentioned.

Owing to the extreme importance of the case, as I understood it, I saw Commissioner Breckenridge and asked permission to be present when Wallace Thursday made his allotment selections in order to see exactly that his testimony was as it should be. This permission was given me by Major Breckenridge, and I was present when the selections were made. Owing to the fact that Wallace Thursday's citizenship was in doubt, it was necessary for steps to be taken in order to protect the eighty which he had filed on for the Delokee Company, in order that its original contract with Wallace Thursday might be fulfilled.

Jess L. Harnage, an attorney at law, a Cherokee citizen had his office just across from mine in the First National Bank Building at Tahlequah. I am not sure that the arrangement which I shall now relate was determined upon before Wallace Thursday had filed on the south eighty or not, but am strongly of the opinion that it was, and this is the arrangement which I made with Jess L. Harnage for the Delokee Gas & Oil Company and that he con-

mented to with such members of that Company as were present in Tahlequah at the time, namely; that Wallace Thursday, if he had not already filed, should file first and that Mr. Harnage, through some members of the Company, should put posts around the eighty acre tract. It was arranged for him to file upon this particular tract selected in allotment by Wallace Thursday, and base his reason therefor upon the fact that Wallace Thursday's citizenship was a matter of doubt.

Before this arrangement was even determined upon I exacted as an unqualified condition from Jess Harnage that his rights were subject, both to the rights of Sam Bob, in the event that he lost the north eighty, and to the rights of Wallace Thursday in the event that his citizenship claim should be established.

Mr. Hastings: Was that in writing?

Mr. Veasey: Simply verbal.

To be clear, Jess Harnage was to have rights in this south eighty simply in the event that the same was not required for the allotments of Sam Bob or Wallace Thursday.

The arrangement went further: We recognized that Wallace Thursday would have to surrender the twenty-seven hundred dollars which he had received from the Test Oil Company on behalf of Ella E. Heady, and to cover that situation an agreement was made, in the event Sam Bob did not require the south eighty and in case Wallace Thursday did not require it,—I mean by that in case Sam Bob should win the north eighty, and in case

396 Wallace Thursday should lose his citizenship claim that, in consideration for being permitted to file upon the land, Wallace Thursday should have the use of the surface of the south eighty as long as he lived, and the royalty on the best producing well drilled on the land. This arrangement was entered into practically in terms before Jess Harnage set out to Bartlesville to have these improvements put about the south eighty. The arrangement was fully and clearly explained to Wallace Thursday himself, so that there would be no misunderstanding, if it were possible for such to exist.

The Delokee Gas & Oil Company was to immediately take a lease for oil and gas purposes from Jess Harnage without the payment of any bonus, but inasmuch as he had incurred some risk it was agreed that in the event he should lose the south eighty by reason of same being required by Sam Bob or Wallace Thursday, and that to repay him for his loss he was to receive from the Delokee Gas & Oil Company five thousand shares of its stock; the entire scheme being to protect the Delokee Company in its lease on the three hundred twenty acre tract of land and to protect the Thursday family first, and in the event they could not take this south eighty that the same should be selected in allotment by the man who was giving the lease to the Delokee Company. Ella E. Heady filed a contest on the north eighty against Sam Bob.

In pursuance with the agreement with the Delokee Company the Delokee Company paid all the expenses of this contest, including traveling expenses of the witnesses, their per diem and attorneys

fees. This very fact is true throughout the entire litigation. The Delokee Company has paid all the expenses, and is to pay the fee which I shall receive in this case.

In October, 1904, the Delokee Company owed me some money for services in different connections and from the Sam Bob case. I was their general counsel at the time and the stock of the Company was then regarded as fully paid up and non-assessable, and selling at ten cents a share. I asked the Company to issue me five hundred shares of the capital stock of the Company, fully paid up and non-assessable, for which I gave them a credit of fifty dollars on my account with them. The matter ran along until some time in June of the present year.

In May of this year the Secretary of the Interior prescribed a regulation to the effect that no individual could be interested in more than forty eight hundred acres of leases either in his own name or in the name of other persons or as the holder of stock in a corporation. At that time I was president of the Mohawk Oil Company, which had about forty-two hundred acres of leases, and I was also interested in two or three other leases, which would bring my aggregate holdings, independent of the Delokee Gas & Oil Company, up to about forty-four or forty-six hundred acres. Mr. D. L. Owsley, bookkeeper and acting Secretary of the Delokee Company, suggested to me the fact that I was holding in excess of the Secretary's requirement, and it was upon his suggestion that the stock was transferred, as the books themselves will show, the transfer being made by Mr. Owsley sometime in June of 1907 this year. Before the transfer was made to Leslie Coombs, or some time close to the time, Mr. Coombs paid me twenty dollars in cash for this holding. The payment was not made at the time of the transfer, for the reason that shortly thereafter I was absent from Bartlesville almost continuously until about the 25th or 26th of July. In the meanwhile, in order to make a financial showing as required by the recent regulations, it was necessary for the Delokee Gas & Oil Company to adopt a resolution in the terms which I shall now read, at a meeting held on the 7th day of July, 1906.

"Resolution.

Whereas, The certificates of stock of the Company disclose that said stock is fully paid up and non-assessable, and

Whereas, Since the issuance of said stock the Secretary of the Interior declared that he will approve no leases for oil and gas mining purposes in the name of a corporation where the stock thereof is non-assessable, unless said stock has been actually paid up in cash to the extent of the par value thereof or in property of a reasonable valuation, and

Whereas, It is the desire of the Board to comply strictly with the regulations of the Department of the Interior and at the same time act fairly toward the stockholders of said Company who have taken said stock as fully paid up and non-assessable, and,

Whereas, the directors of said Company own and control at least nine-tenths of the capital stock of said Company,

Now, Therefore, Be it resolved by the Board of Directors of the Company that they shall no longer regard said stock as non-assessable so far as the holdings of stock in said Company are concerned and that they will consider as paid in on account of said stock just such sum of money as has been actually paid in and expended by the company and that they will hold their said stock subject to the order of the Board of Directors up to the par value of said stock.

And be it further resolved by said Board, that in the event that the stockholders of said Company, who are not directors hereof, shall object to this course that the members of said Board of Directors shall pay into the Treasury of the Company such assessments as may be levied on the stock of said stockholders; said payment to be made to said company in the proportion that the Directors own in said company.

And be it further resolved by said Board that there shall, and there hereby is called upon each share of the capital stock of said Company, sufficient to bring the actual amount paid in on each share up to four and one-half cents per share".

I had given the Delokee Gas & Oil Company credit for fifty dollars. The stock under this new arrangement, under the resolutions adopted by the Board of Directors, was subject to an assessment of about 95½ cents on each share; such being the case, the only possible arrangement was for me to receive from Mr. Coombs twenty dollars and to charge back to the Company the thirty dollars for which I had given them credit.

398 In the summer of 1905, as the time approached within which Delaware citizens could no longer dispose of their holdings, I feared that some complications might result in regard to the rights of Harnage and Sam Bob and the other persons in interest with respect to the improvements on the south eighty. Acting for Wallace Thursday and upon a verified petition we asked the Dawes Commission to have certified as the Delaware surplus holdings of Mary Thursday and Sam Bob the improvements upon the south eighty. It was our intention to secure an order of court directing Wallace Thursday as the guardian of these incompetent persons to dispose of these improvements to J. L. Harnage, and at the same time it was my intention to reduce to writing the understanding which had been verbal theretofore in order that the rights of all the parties might be protected. While this petition was pending before the Dawes Commission, Mr. Harnage, myself, Wallace Thursday and possibly some members of the Delokee Gas & Oil Company appeared before the court at Nowata and obtained an order of the court directing Wallace Thursday as the guardian of these incompetent persons.

Mr. George: Have you a certified copy of that order of court?

Mr. Veasey: We have. To sell the improvements upon the south eighty to Jess L. Harnage when the same should be certified, at a

price to be designated by the Indian Agent. We heard nothing from our petition asking that the improvements on the south eighty be certified as the surplus holdings of these people, and on the 22nd day of July, 1905, this letter was written from our office, which I desire to copy into the record and have the original made a part of the record.

Mr. Huckleberry: I desire to object to the letter, for the reason that any statement made by Veasey & Rowland could not possibly have any effect or weight against the rights of the contestant.

Mr. Veasey: Our only purpose in referring to this letter is to show our good faith in this matter.

Copy of letter dated July 22, 1905, original of which is attached to the record in this case marked Exhibit B:

"JULY 22, 1905.

Hon. Tams Bixby, Tahlequah, Ind. Ter.

DEAR SIR: Some weeks ago we presented to the Commission to the Five Civilized Tribes a petition of Wallace Thursday, as guardian of Mary Thursday, an insane person, and Sam Bob, a minor,—Delaware-Cherokee citizens, to have certain lands described in said 399 petition certified as surplus Delaware holdings of these two incompetent persons. This petition recited that these two incompetent persons each owned an undivided one-half interest in the lands sought to be certified and the prayer of the petition was that a date be set upon which all the parties in interest might appear and the ownership of the improvements be determined by the Commission. We heard nothing of this petition until in response to a telegram we were apprised that inasmuch as a contest was pending between Samuel Bob and Ella E. Heady, no lands in which Samuel Bob was interested could be certified as surplus holdings. From this we inferred an intention on your part to hold the 80 acres sought to be set aside as surplus holdings until this contest case was decided, and if the same were decided adversely to Samuel Bob to file him on this tract of land.

It is also our desire that if Samuel Bob does not prevail with regard to the land in contest that he be permitted to file upon the 80 acres which is desired to be set aside, but both Mary Thursday and Samuel Bob have their rights in the premises. They are Delaware-Cherokee citizens and as such have the same rights to sell such improvements upon their surplus holdings as any other Delaware-Cherokee citizen. In fact if there is any distinction and indulgence it should be in favor of these two persons as they are both incompetent and unable to act in the matter for themselves.

It occurs to us therefore that a course may be taken in this matter that will fully protect Samuel Bob in the South 80 so far as selecting the same in allotment should he lose the North 80 and at the same time protect Mary Thursday and Samuel Bob in such improvements as they may have on what we deem to be their surplus holdings. That is that the Commissioner might order a hearing at which the conflicting rights of the several persons who have filed upon this land

and of Mary Thursday and Samuel Bob may be determined. If it develops that these improvements are the property of these two incompetent persons, the Commissioner might make a conditional certification of the lands as their surplus holdings, the condition being that they can sell the improvements upon the lands as surplus holdings provided Samuel Bob prevails in the contest now pending. The order of court directing the sale of the improvements could be of the same condition and the purchaser would be bound by that condition. In that way it occurs to us that your purpose in the premises could be accomplished and Samuel Bob and Mary Thursday be accorded the same rights in their improvements upon said land as are given to other citizens of their class.

Then furthermore, the Commission is holding this South 80 as a substitute allotment for Samuel Bob when as a matter of fact you do not know that his rights to the improvements are such that he can select the land. We recognize that the claims of Jess L. Harnage and Wallace Thursday to the South 80 are such that they can (not) prevail against Samuel Bob but so far as Bettie Mortin is concerned we know nothing of her rights in the premises. We do know this, however, that she claims that she was in the custody of Wallace Thursday and that he received her payment money and that it was her payment money, rather than that of Samuel Bob's, that went into the purchase of the South 80.

Furthermore charges of fraudulent conduct are made in connection with this case and some of them find expression in the decision of the Commission in the Bobs-Heady case. We know as a matter of fact that Betty Morton was filed upon this South 80 at the instance of the same man who was to instrumental in bringing about the sale of the North 80. In short, so far as we can learn
400 Wallace Thursday has done everything in his power to wrest the two eighties from Sam Bob. This being the case and inasmuch as the Commission implied that there was fraud in the case, a hearing on the petition we have filed could be so broad in its scope that these fraudulent practices could be definitely determined upon.

So far as we are concerned, we are anxious that an inquiry be made and that it be as searching as possible.

In conclusion, we have this to say that if the petition is one that should not be granted would you kindly make an order to that effect in such form that the matter may be appealed to the Commissioner of Indian Affairs in the regular way.

A further fact that suggests itself to us is that if these incompetent persons are to be protected in their improvements at all it must be done before the third day of September at which time their rights will cease to exist if not disposed of as suggested.

Very respectfully,

VEASEY & ROWLAND.

V-D.

On July 23, 1905, the following letter was written to correct certain stenographic errors made in our letter of July 22, 1905:

"JULY 23, 1905.

Hon. Tams Bixby, Muskogee, Ind. Ter.

DEAR SIR: Under date of July 22nd we wrote you in regard to a petition filed with the Commission to the Five Civilized Tribes to have certain lands set aside as the surplus Delaware holdings of Mary Thursday and Sam Bob. This letter left the office without examination and several stenographic mistakes developed later which we desire to correct.

At page three of the original it is stated that "we recognize that the claims of Jess L. Harnage and Wallace Thursday to the South 80 are such that they can prevail against Sam Bob." This is an error. What we meant to say was that "we recognize that the claims of Jess L. Harnage and Wallace Thursday to the South 80 are such that they cannot prevail against Sam Bob," as we know the condition under which both of these parties filed. On the other hand so far as Bettie Morton is concerned we know nothing of her rights and it would take a hearing to determine this.

At the same page we state that Wallace Thursday has done everything in his power to wrest both eighties from Sam Bob. Instead of "Wallace Thursday," it should have been "Wallace Buford."

It is Wallace Buford who has caused Bettie Morton to be filed on the South 80 and who was instrumental in inducing Wallace Thursday to sell the North 80 to Ella E. Heady.

We desire that you consider these corrections in connection with our former letter.

Yours very truly,

VEASEY & ROWLAND."

V-D.

I do not recall whether we received any reply to this letter, but I was informed by Bruce Jones, Chief Clerk of the Cherokee Land

Office, that a conditional certification was not within the regulations and could not be permitted. No further action was taken at that time. Some time after we had taken this action, the Commissioner of Indian Affairs and Secretary of the Interior rendered a decision in this case, the Secretary of the Interior sending the matter back for rehearing. Before this rehearing was had another circumstance occurred in this connection: The Delokee Gas & Oil Company had secured a lease for oil and gas purposes from Wallace Thursday on the South eighty and one from Sam Bob on the north eighty through an order of court continuing during his minority, and one from Jess L. Harnage on the south eighty. We also had secured under order of court a lease upon 90 acres of the allotment of Mary Thursday; the other 70 acres going to another company, which it developed had certain equities in the matter.

I don't recall that I saw much of Sam Bob at any time during this litigation up to the circumstance which I shall now relate. He had been a minor during the entire time, and what relation I had had with the Thursday family in this connection were with Wallace Thursday himself. I was apprised that Sam Bob would attain his majority on the 4th day of March, 1905. Frequent reports came to

my ears that other persons were bent upon getting a lease from Sam Bob on the north eighty when he attained his majority. At all events, some time in February, 1906, Samuel Bob together with L. T. Harned, who was then I think connected with the Delokee Gas & Oil Company, took a trip. The full details of that trip appear in the examination of Samuel Bob before the Commissioner at a previous time. I had no personal knowledge of their whereabouts during this trip at any time, excepting as I shall relate later. I don't recall that I received any communication from the agent of the Company during the time that he was gone excepting a telegram notifying me to meet Sam Bob and Harned at Oklahoma City on the 4th of March, and the hotel at which I should meet them was indicated in the telegram. I left Bartlesville for Oklahoma City Sunday the 4th day of March and reached there about six or six thirty in the evening and went directly to the Threadgill hotel where I had my supper. It was not my intention to see either Sam Bob or Mr. Harned that night, which was Sunday night. In walking on the main street of Oklahoma — after supper I met them accidentally and went with them to a room, or rooms, they were occupying over a restaurant on the main street of Oklahoma City. We were together about a half hour, and it was suggested by Mr. Harned that he and Sam had intended to go to a show at a neighboring theatre, and asked me if I would go with them, which I did. The show continued until about half past ten, and we left the theatre together, I walking with them about one hundred and fifty yards, and leaving them at the corner, I going to the Threadgill hotel and they going in the direction of their rooms. Nothing was said that night at all about a lease which I purposed to take on the allotment of Sam Bob, and I took it for granted that he understood that a lease was to be given and didn't mention it at all. When I left them it was with the understanding that we should meet at the restaurant under the rooms they were occupying at 8:00 o'clock next morning. I did meet them there at that place, and Mr. Houghton, a business man in Oklahoma City, a member of the City Council and the owner of this restaurant, volunteered to try to find a Notary Public for us. He took us to the City Hall in Oklahoma City and into the office of the City Clerk where we found a Notary Public, the City Clerk himself. There were present at the time as notary public the City Clerk, Mr. Elmer Houghton, and I think his brother, whose name I don't remember, Mr. Harned and Sam Bob. Every single word which I expressed in connection with that lease was uttered in the presence of these men. I called Sam's attention to the fact that we understood he had bargained his lease previously and intended to give it to the Delokee Gas & Oil Company in pursuance of that bargain, which he assented to. I called his attention to the further fact of the expense which the Delokee Company had been to, on his account and also stated that Wallace Thursday had requested that a house be built on his allotment in partial consideration for the lease which was to be taken. This request of Wallace Thursday's was made to me in our office in the presence of Mr. Coombs before I had left for Oklahoma City, Wallace Thursday knowing

that I was going there for the purpose of taking this lease. The lease was explained to Sam Bob in all respects, and he signed the same with a full understanding of it.

Now in conclusion, I want to call attention to a letter purporting to have been written by Wallace Thursday on the 23rd day of August, 1906, addressed to Dana H. Kelsey, a copy of which is on file at Washington, both in the office of the Commissioner of Indian Affairs and the Secretary's office, which letter has been since repudiated by Wallace Thursday, and especially this part of that letter:

"* * * got him to go with them down to Oklahoma City, O. T., where, in a previous journey, before he was 21 years of *old*, when these same parties had taken him there, and Veasey met him there, they made him acquainted with a prostitute and tried in every manner to get him to give them a lease or a contract for a lease on this land, and in return only promised to build a small box house on his land, at a cost of not exceeding \$500.00,——"

The implication in this letter that I either directly or indirectly intorduced Sam Bob to a prostitute for any purpose whatever is absolutely and maliciously false. I not only never mentioned such a thing to him, but I never dreampt of mentioning such a thing to him, nor would I have consented to it in any sense if I had known such a thing were being done.

In conclusion, I want to say that I have always regarded the interests of Sam Bob and the Delokee Gas & Oil Company as identical. It was necessary for Sam Bob to win the north eighty in order that the Delokee Gas & Oil Company might get a lease on that land. It was the most valuable tract that he could secure, and in this connection I desire to say that on several occasions Mr. Heady, the husband of Ella E. Heady, the contestant in this case, has proposed to me to compromise.

403 Mr. Huckelberry: We object to any statement made to Mr. Veasey which is in the nature of a compromise, being under all the rules of evidence inadmissible.

Mr. Veasey: I believe the scope of this investigation, since it affects us personally will admit of this statement.

Mr. Huckelberry: Does it affect the rights of the contestant, or your rights?

Mr. Veasey: It is not for that purpose.

Mr. Huckelberry: If it is for the purpose of vindicating Mr. Veasey, we will allow the objection to stand.

Mr. Veasey:: I told him both at the Katy Hotel at Muskogee and at Nowata that under no conditions whatever should I ever consent to Sam Bob relinquishing an inch of that north eighty; that a compromise might be arranged with the Delokee Company under which he might secure a portion of the royalty, but under no circumstances should Sam Bob give up an inch of that land.

Examination.

By Mr. Rowland:

Q. At the time Sam Bob withdrew his waiver of right of appeal

and signed a paper asking that his relinquishment as to a portion of his allotment be cancelled, were you in Bartlesville?

A. I was not.

Q. In Washington?

A. Yes.

Q. You have no personal knowledge of the circumstances under which that paper was signed?

A. I have not; nor have I any personal knowledge of the circumstances under which Sam Bob signed the reinstatement of Veasey & Rowland as his attorneys; I was in Washington at that time.

When a rehearing in this case was ordered, I thought it necessary for Wallace Thursday to re-tender the twenty-seven hundred dollars he had received from the Test Oil Company. He had done this once or twice before, and for a time absolutely refused to tender the money, and when finally he did consent to this it was with the statement that this was the last time that these people (referring to Ella E. Heady and the Test Oil Company) would ever have a chance to take that money.

Cross-examination.

404 By Mr. Huckelberry:

Q. When was it that Wallace Thursday made the statement that he would make no further tender?

A. Some time before May 13th of this year, at the time of this rehearing. He had in February consented to tender it on this occasion, but he said not again.

Q. Your employment as counsel for the Delokee Company began in April, 1904?

A. Yes sir.

Q. And has continued since that time up to the present time?

A. Continuously.

Q. When was Wallace Thursday appointed guardian of Sam Bob?

A. I can't answer that. My impression is it was in the spring of 1904, although I am not clear upon that at all. It was before he filed at any rate.

Q. When did he file?

A. In the early part of May, 1904.

Q. You secured his appointment, didn't you, after you were employed?

A. I think not.

Q. When you were employed as counsel for the Delokee Gas & Oil Company was Wallace Thursday at that time legal guardian for Sam Bob?

A. I can't answer.

Q. Isn't it a fact that you advised his appointment as legal guardian?

A. Yes, I would have advised it if it was not already made.

Q. You have no recollection though whether he was guardian when you were employed?

A. No positive recollection upon it.

Q. Your best impression?

A. My impression is he was appointed before I was employed.

Q. In May, 1904, you lived at Tahlequah?

A. Yes sir.

Q. Mr. Harnage, as you testified, was rooming in the same building with you?

A. Just across the hallway in another building.

Q. You and Mr. Harnage were very friendly at that time?

A. Yes.

Q. You made the arrangements, didn't you, at Tahlequah as to where Wallace Thursday and the Delokee people should board?

A. I most emphatically did not.

Q. Who was it did this?

A. I can't tell you.

Q. Who came down in that party?

A. Whom do you mean?

Q. Of the Delokee Company and Wallace Thursday?

A. My impression is that Mr. Gray, Mr. Coombs, Mr. Harned and perhaps Mr. Evans.

Q. Preacher Evans, was that?

A. I think that he is so reputed.

Q. Where did the party stop at Tahlequah?

A. I don't remember.

Q. Where did they keep Wallace?

A. I don't remember that. I saw Wallace occasionally.

Q. You never saw Wallace except some members of the Company were with him, did you, except the time you managed to get him to the land office?

A. I don't know whether I did or not.

Q. Isn't it a fact that they all had a little room at Frank Wilson's?

A. I can't say; I never was,—nor was I in that room.

Q. You testify positively that you made no arrangements for them to occupy that room?

A. I do, most emphatically.

Q. This arrangement with Mr. Harnage was made about the time of this trip of Wallace Thursday to Tahlequah?

A. Yes,—no, I think now the land office hadn't opened.

Q. When did you first talk the matter over with Mr. Harnage that this would be a pretty good proposition?

A. Not until the land office opened.

405 Q. Didn't you figure on Sam Bob before that time?

A. In connection with other parties.

Q. Where did you break the glad news to him?

A. After the land office opened.

Q. What other parties had you figured with already?

A. Dr. Ross, and Morton was another.

Q. You were hunting some one to,—?

A. Yes, who would protect that land.

Q. For whom, the Delokee Company?

A. And Wallace Thursday.

Q. Why did you go in the land office, Mr. Veasey?

A. With Wallace Thursday?

Q. Yes.

A. I wanted to be sure that his allegations of ownership of the land were properly inserted in the application.

Q. In other words, you wanted to be sure he would swear correctly?

A. That is it exactly.

Q. Were you not a little bit afraid that he would?

A. No, I had no belief at all on that subject; he was ignorant and I had no knowledge to know what would result.

Q. Your purpose was to file,——?

A. Sam Bob on the most valuable eighty.

Q. Then you actually did file Wallace Thursday on the south eighty?

A. Yes, he filed himself.

Q. You had it done?

A. Yes, I advised it.

Q. You knew at that time that was changing the contemplated intention of these two men?

A. Not at all. The original intention was that Sam Bob should be filed on the north eighty and Wallace Thursday on the south eighty.

Q. After you went into the matter you advised that Sam Bob be filed on the north eighty and Wallace Thursday be filed on the south eighty?

A. That they stand by their original intentions, and do justice with all.

Q. You gave the advice then that I,——?

A. I did.

Q. That was in May, 1904?

A. This advice was given in April, 1904.

Q. Why did you advise that Wallace Thursday select any of that land for himself?

A. I appreciated the fact that the improvements belonged to these incompetent persons, and that they were the only ones that could object, and naturally I didn't think they would object against a member of their own family.

Q. Did you get an order of court to the effect that a party might buy these improvements?

A. I did not.

Q. So you were allowing this proposition, simply because of a sale which had been made without an order of court?

A. I knew it would be perfectly satisfactory.

Q. Do you mean to swear that you knew if these two people were competent they would agree to that?

A. I don't know it.

Q. You knew however, that they were incompetent, how do you justify your action?

A. The record will justify my action.

Q. How do you justify that action now?

A. In what respect?

Q. As to what rights Wallace Thursday had in that respect?

A. I knew he had no positive rights at all. I thought it was to the best rights of all.

Q. Why didn't you get an order of court?

A. I didn't think it was necessary.

Q. You thought there was nobody to question it if the Delokee Company were satisfied?

A. I presume I,——

406 Q. You knew the amount that had been paid to Wallace Thursday, Twenty-seven hundred dollars, for the north eighty?

A. Yes.

Q. You knew that the south eighty was also considered valuable, didn't you?

A. Not as much as the north.

Q. I am not asking you that?

A. Yes.

Q. You knew at the time that the south eighty could be sold for quite a large sum of money?

A. Possibly I knew that.

Q. Didn't you?

A. I don't recall that I thought about it at all.

Q. You knew that it was valuable when you made that deal with Harnage?

A. Yes sir.

Q. Give me the details again of that proposition to Jess Harnage?

A. Verbatim?

Q. Please?

A. Jess Harnage was to file upon the south eighty, the condition being that if Sam Bob lost the north eighty in contest that he withdraw from it and protect Sam Bob, and let him have the south eighty without a contest; that if Sam Bob won the north eighty and Wallace Thursday established his citizenship claim that Harnage was to withdraw without a contest. In the event that neither of the Thursday family required this south eighty as their allotment that Harnage's allotment should stand, and to make Wallace whole for this twenty-seven hundred dollars, he should have the use of the surface as long as he lived and the royalty on the best producing well on the land.

Q. That arrangement was not made after consultation with any court?

A. Not at all.

Q. That contract was absolutely verbal?

A. Verbal.

Q. No written memorandum was made in 1904?

A. No, not when Wallace Thursday filed first. Harnage's filing was subordinate to that.

Q. All the consideration moving from Harnage being allowed to file on this place went to Wallace Thursday?

A. Yes sir.

Q. You were contesting the right of Wallace Thursday to sell

the north eighty for the reason that it belonged jointly to Sam Bob and Mary Thursday?

A. Yes sir.

Q. Yet you sanctioned making a deal by which Wallace Thursday sold the south eighty, and by which one of the assets of these incompetents was attempted to be disposed of by Wallace Thursday?

A. I did, because the issue in the north eighty was distinct from the south eighty.

Q. Do you mean to say that you considered at that time that the rights of these incompetents were greater in the north eighty than in the south eighty?

A. Was the same.

Q. If it was wrong for Wallace Thursday to sell the right to the north eighty for \$2700.00, wasn't it wrong for him to sell the south eighty?

A. You overlook the fact that I was trying to see that the Thursdays should keep that land first, last and all the time.

Q. Likewise that the Delokee Company should keep its lease?

A. Certainly, that was the original understanding.

Q. That original understanding was made for the sale of the lands of incompetents without an order of court?

A. Yes.

Q. You knew that wasn't a valid contract?

A. Most certainly.

407 Q. And you knew this contract,——?

A. Why certainly.

Q. You knew also when you were trying to carry this out that if the entire facts were given to any court,—that if it was sold it would bring a larger sum than eight hundred dollars?

A. I was willing to submit the entire facts to the Commission.

Q. Didn't you know that the Test Oil Company had agreed to give \$2700.00 for the north eighty?

A. Yes.

Q. Wasn't it at the time when you were trying to have these incompetents enter into a contract?

A. Possibly so.

Q. When was it?

A. I can't say positively.

Q. You went ahead and attempted, as the attorney for the Delokee Company to deliver a lease to them of the lands of these incompetents for the sum of eight hundred dollars when you knew that that wasn't a fair consideration for the execution of this lease?

A. That was a fair consideration when the contract was made.

Q. When was that contract made?

A. May, 1903.

Q. You knew at the time the contract was made Wallace Thursday had no right in the matter?

A. Yes.

Q. Still, as a lawyer, you were willing to go ahead and allow this lease to be made for a much less sum than its value?

A. To follow the original agreement, yes.

Q. You represented Wallace Thursday in the guardian matter of both Sam Bob and Mary Thursday?

A. Yes. I also represented the Delokee Gas & Oil Company in securing their lease under order of court on this occasion, as was usual in cases of attorneys, and is usual.

Q. And also you represented them in securing from the court this order authorizing Wallace Thursday to sell to Jess L. Harnage?

A. Yes.

Q. What was the consideration stated in that order of court as moving from Jess L. Harnage to these people?

A. In the first place he was to buy the improvements at the price which the law permitted Wallace Thursday to receive, then in addition to that an instrument was drawn up (Exhibit A), showing exactly what the consideration is.

Q. Is there anything in that instrument about Wallace Thursday occupying that for life?

A. Yes sir.

Q. Did you in your application to the court state that such a large consideration was moving to Wallace Thursday, the guardian?

A. I did not.

Q. Why not?

A. Simply, because the only order the court could give would be to sell these improvements at their appraised value.

Q. Then you asked the court to authorize a party to enter into a transaction by which some two hundred dollars was given to the ward, and probably something like a thousand to the guardian?

A. The Court could only take cognizance of the appraised value of the land.

Q. Why didn't you submit that to the court?

A. Simply because the Court has no jurisdiction of it.

Q. The only consideration moving from Jess Harnage for the improvements was the paltry sum of the actual appraised value of the improvements.

A. Thousands of acres were sold under the same paltry conditions.

Q. Was a copy of that contract filed with the court?

A. A copy was given Wallace Thursday.—No it was not; that was purely an individual transaction between Jess Harnage and Wallace Thursday.

Q. Why did you want to give the "old negro" anything?

408 A. You have written briefs trying to give the old fellow something; I supposed I had a right to do the same thing.

Q. Please remember you are a witness.—Wasn't this made before Wallace Thursday made application to the Court?

A. They were made at the same time,—same day.

Q. My point was this, both the order of court and the *court* were made the same day?

A. In order that the original understanding might endure we drew up that contract.

Q. You knew this was not worth anything to Wallace Thursday when you drew it up?

A. I think it is worth something to him.

Q. Do you think it could be enforced?

A. I do.

Q. Do you think the guardian can take to himself advantage of his ward?

A. It would depend upon the rights of the guardian and ward.

Q. Do you take the position that your guardian could do so?

A. I am not able to say.

Q. You are familiar with the Act of April 21, 1904?

A. In some respects I am.

Q. In regard to the Delaware surplus?

A. I tried to familiarize myself with it.

Q. That Act was in force at the time of the filing of Wallace Thursday at Tahlequah in May, 1904?

A. Yes.

Q. At that time you knew that these incompetents had a right under that law to sell their improvements, and it had to be done in a certain way?

A. Yes sir.

Q. This instrument was not filed or attempted to be taken until long after the right of the Delaware citizens had elapsed under that original Act, will you account for that?

A. When that action was taken,—what is the date of that,—June, 1905, they still had several months to dispose of their surplus holdings.

Q. Under the original Act?

A. No.

Q. And you allowed the time for these incompetents to absolutely elapse under the original Act?

A. I suppose so.

Q. Have you remedied the breach?

A. Yes sir.

Q. Why didn't you do sooner?

A. Simply because I didn't think before.

Q. In regard to the trip to Texas, why did you send Sam Bob off to Texas?

A. I didn't send him to Texas.

Q. Why did you advise his being sent?

A. I am not sure that I advised his being sent. I probably consented to it.

Q. Why was it?

A. The Company felt that there were a number of people around here who hadn't been to the large expense they had in defending this lease, and that the Company would be handicapped in that amount.

Q. Sam Bob at the time he consented was an incompetent?

A. He was competent at the time he finally consented.

Q. At the time he left here he was a minor?

A. Yes sir.

Q. You knew that Sam Bob could obtain for the execution of that lease a large bonus?

A. He probably could, if that land was not in litigation. I don't know that he could have gotten so much more than we were paying and expending.

Q. How much have they expended?

A. About \$2200.00.

Q. What would have been a fair bonus on March 4, 1906?

A. I can't say because of its being in litigation. I can say if the land had not been in litigation the bonus would have been larger, but upon that figure I can't give you facts.

409 Q. Nor even judgment?

A. I can't say. Land was sold for various prices around here.

Q. What was it you said this morning about a statement of the moneys paid out?

A. I will do that later.

Q. This will be itemized?

A. Oh, yes.

Q. If Jess L. Harnage lost the south eighty he was to receive five thousand shares of the capital stock of this Company?

A. Yes sir.

Q. These shares to be paid up and non-assessable?

A. That matter will have to be taken care of. He was in the first place to have received these shares paid up and non-assessable; I think he is entitled to it.

Q. Under the original contract between Harnage and the Company, Harnage is to receive for the loss of this south eighty Five Thousand shares of the capital stock of the Delokee Gas & Oil Company fully paid up and non-assessable?

A. I think so.

Q. There has never been a change in that contract?

A. No sir.

Q. Under the present arrangement of the Delokee Gas & Oil Company in regard to its stock, the present holdings are worth nearly par—either worth par or subject to calls for subscription, which might make them worth par in actual money paid in?

A. I don't catch your purpose.

Q. All the stock of the Delokee Gas & Oil Company issued now is paid up four and a half cents on the share?

A. Yes.

Q. And the stockholders are liable for the balance as it may be called in?

A. Yes, that is true.

Q. On the Texas trip, you sent Sam Bob out of the way until he reached his majority so that the Delokee Company wouldn't be required to bid against outsiders?

A. When Sam Bob was off from here he said he went to Texas; I don't know.

Q. Didn't you say that this trip was furnished him by the Oil Company?

A. That was their purpose.

Q. Their purpose and your purpose, you being a member of the Company?

A. Read the question, please. (Question re-read). "On the Texas trip, you sent Sam Bob out of the way until he reached his majority so that the Delokee Company would not be required to bid against outsiders"? (No response).

Q. Isn't it a fact that the trip which was given by the Delokee Company to Sam Bob prior to his attaining his majority was for the purpose that a lease might be obtained by the Company without the Company being required to bid against outsiders for the lease?

A. That was their purpose.

Q. When did you take a lease from Jess Harnage?

A. Shortly after he filed in May, 1904. I might add in this connection that there were a number of other people who tried to secure a lease in about the same way.

Mr. George: Who were they?

A. That will be given.

Q. Do you know of your own knowledge?

A. No, I do not.

Mr. Huckelberry:

Q. Do you remember where these parties were rooming in Oklahoma City?

A. Over a restaurant, just about opposite the Lee Hotel. Mr. Houghton conducts that restaurant.

410 Q. Mr. Houghton hunted up a notary public for you?

A. He was to do that—we all went to the City Hall together.

Q. Did he know anything about this transaction, do you know?

A. I didn't explain it to him, excepting in the presence of Sam Bob at the City Hall.

Q. You were careful to have witnesses to what you stated to Sam?

A. You bet.

Examination.

By Mr. Rowland:

Q. In the letter referred to heretofore as having been written by Wallace Thursday to the Indian Agent there is an allegation which might be construed to imply that you, as a member of the firm of Veasey & Rowland, "had caused Sam Bob to build a dancing platform on the farm, and sent one of their parties to Caney, Kansas, to get whiskey, and on the night of the dance got him drunk and got him to go down to Oklahoma City." This charge is not made directly against you, but it is made against the persons representing the Company together with Veasey & Rowland. State as a fact whether or not you know anything regarding such a circumstance?

A. I know nothing of it personally at all. I was in Washington.

Recross-examination.

By Mr. Huckelberry:

Q. Is there any record of the Delokee Gas & Oil Company showing that deal with Harnage?

A. There is so far as the stock is concerned; the minutes show that—show that five thousand shares should be given to him.

Q. That five thousand shares has not been issued, has it?

A. I suppose so; I don't know.

Examination.

By Mr. Rodgers, on behalf of the Commissioner:

Q. Do you know where this \$2700.00 is at present, paid to Wallace Thursday by Ella E. Heady?

A. We have subpoenaed the cashier of the Bartlesville National Bank to testify about that point. It was deposited there, my last knowledge of it.

Q. That will be cleared up later?

A. Yes sir.

Q. Have you ever had any interest in this Delokee Company except this five hundred shares which you bought in October, 1904?

A. Not a bit, either actual or prospective. That five hundred shares was a sort of a flyer when I came to this country.

Q. In regard to this five thousand shares which is to be given Harnage in the event he loses the south eighty, as you understand it, are these to be paid up and non-assessable shares?

A. That question was not anticipated when the contract was made.

Q. You now testify relative to the original agreement?

A. Yes sir. This resolution bringing about the change was a recent one, and we haven't had time to adjust ourselves to the situation fully.

Q. Knowing the title to the north and south eighties as you do, would you state in your judgment in the event Sam Bob could not get the north eighty, that he could win the south eighty in the contest?

A. Our agreement with Harnage settled that I think, this particular point, so far as that is concerned. I don't know one thing on earth about this woman Martin.

Q. You have investigated into the title of this land pretty fully, have you not?

A. I have.

Q. Any rights she may have has not developed?

A. Mr. Harnage has a prior right to her.

Q. In the event Sam Bob does not get the north eighty you think he can get the south eighty?

A. Yes, he can step in the shoes of Jess Harnage; that is the theory upon which we have acted.

Recross-examination.

By Mr. Huckelberry:

Q. Have you any written relinquishment already signed up by Jess Harnage?

A. Written relinquishment?

Q. Yes.

A. No, we have not to my knowledge. I think I am sure we have not.

Q. You had a conversation with James K. Jones, Junior, when that lease was signed?

A. Yes.

Q. Was that the contract you refer to?

A. Yes.

Q. Has the contract between the Delokee Gas & Oil Company and Harnage been reduced to writing except as given in the minutes there?

A. I think not. Simply in the form of a resolution on the records of the corporation, and this is further provided for by the issuance of five thousand shares of the stock of the company.

Q. Who paid for the improvements you bought, Harnage?

A. I can't tell you.

Recross-examination.

By Mr. George:

Q. Mr. Veasey, at the time this contract was made between the Delokee Company and Mr. Harnage whereby, under certain circumstances, he was to get five thousand shares of the capital stock of the Delokee Company, was that made at the time it was understood they were to give non-assessable, fully paid up stock?

412 A. Yes.

Q. It was understood then at the time the contract was made, Mr. Harnage was to get five thousand shares fully paid up stock, and non-assessable?

A. Yes.

(Witness dismissed.)

C. I. WEAVER, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. What is your residence?

A. Nowata.

Q. Age?

A. 29.

Q. Business?

A. Lawyer.

Q. Examine this instrument (Contestees' Exhibit A), and state whether or not you were one of the attesting witnesses?

Mr. Huckleberry: We will admit the execution of that instrument.

By Mr. Veasey:

Q. That is your signature?

A. Yes, sir.

Q. Was that paper read over to Wallace Thursday, and did he sign it?

A. Yes, sir.

Mr. Rodgers, on behalf of the Commissioner:

Exhibit A, heretofore referred to is now offered in evidence, no objection being made to its introduction.

(Witness dismissed).

SAM BOB, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. State your full name?

A. Sam Bob.

Q. How old are you?

A. Going on 22.

Q. You are the contestee in this contest case, are you not?

413 Mr. Huckleberry: We desire to make this objection; when this case was called for hearing at Muskogee, immediately after his appearance before the Commissioner, and we objected to the testimony of Sam Bob at that time, for the reason that he was still in the custody of the members of the Delokee Oil Company, and I asked that he be allowed by them to return to his home, where under natural circumstances he could consult with Wallace Thursday, his grand-father, and be relieved from the custody and control of the members of the Delokee Company, and if that was not done that we, in the name of Ella E. Heady, would object to his hearing at this time here today.

Now, the facts are that he was not allowed to return to his home, but has since that time been in Arkansas City, Kansas, and elsewhere and no opportunity has been allowed to Wallace Thursday to talk to him except for a short time here today and then only in the company of the representatives of the Delokee Company, and now I want to make the objection which I feel that I should make on the part of the Contestant, and suggest further that opportunity should be afforded these two men, whose interests are identical, to have an opportunity to converse together about this subject before testimony is taken, and that that conversation be free from the influence of any member of the Delokee Company or its agents.

Mr. Veasey: If the Commissioner please, we do not understand the attitude of the attorneys for Ella E. Heady in asking that this witness consult with Wallace Thursday. Two years ago in the Court at Nowata Mr. Huckleberry objected to Wallace Thursday being appointed guardian on the ground of his incompetence and dishonesty.

Wallace Thursday has testified in your presence that certain Delawares came to him and they told him a man had sent for him to come to Dewey and talk over certain things. We submit to the Commissioner whether or not the objection is a proper one. So far as his being under our control or custody, the boy is here to answer for himself.

Mr. Huckleberry: I desire to say in response that when Wallace Thursday was suggested as a proper person to be appointed guardian of Sam Bob at Nowata, we represented some other interests, I did suggest to the court that it might be well to look into his competency. At the request of Mr. Veasey, who assured me that Wallace Thursday was a proper person, I withdrew that suggestion, and the court made no such investigation, so far as the appointing of Wallace Thursday was concerned. I did not represent Ella E. Heady at that time.

So far, from a personal standpoint.

The reasons why these two persons should be allowed opportunity to consult together must be apparent to the Commissioner, and I know of nothing that can add weight to the facts that the Commissioner already knows, as shown by the testimony on the night recorded in this case.

Mr. Bixby: I know of no way we can regulate the conduct of Sam Bob when he is outside of our jurisdiction. I think he will have to act for himself, and you will be allowed to bring out such acts as you may desire from an investigation of the witness.

Examination.

By Mr. Bixby:

Q. Sam, have you any desire to talk with Wallace Thursday at this time?

A. Yes, I talked to him awhile ago.

Q. When did you see him?

A. About ten minutes ago.

Q. How long did you talk with him?

A. Just a short time.

Q. You have had all the talk with him you wanted to have?

A. Yes, sir.

Q. You have no desire to talk with him further at this time?

A. No, sir.

By Mr. Hastings:

Q. Who was present when you were talking to him awhile ago?

A. I and him was alone when we was talking.

Q. Any one standing near you?

A. No.

Q. Where were you talking?

A. Right back of this house here.

By Mr. Bixby:

Q. That is the first opportunity you have had to see Wallace Thursday since I saw you down at Muskogee?

- A. That's the first time.
Q. The first time you have had?
A. Yes. I could have come home if I wanted to.
Q. Have you been looking for him today?
A. No.
Q. Didn't you want to see him earlier?
A. No.

Examination.

By Mr. Veasey:

Q. Sam, do you know where the land is in contest between you and Ella E. Heady?

A. Yes.

Q. How long have you known that land, Sam?

A. About fourteen or fifteen years, something like that.

Q. Do you know where the eighty directly south of that is?

A. Yes.

Q. Which of these tracts of land do you regard as the more valuable?

A. South eighty.

415 Q. South eighty more valuable than the north eighty?

A. The north eighty, I should have said.

Q. Why do you think it is more valuable?

A. Oil and gas.

Q. Sam, why did you appear at the Dawes Commission in July and attempt to give up the north 80, and take the south 80?

A. I thought I couldn't hold it; that is the reason I done that.

Q. Sam, why did you think you couldn't hold it?

A. Several parties told me I couldn't.

Q. Who were they?

A. Si Johnson, Wallace Thursday and Norwood.

Q. Any one else?

A. Two or three fellows.

Q. Who were they?

A. Jim Shaw and Dick.

Q. What did he tell you?

A. I don't know what all of them told me,—told me I better take the south eighty.

Q. And give up the north eighty?

A. Yes sir.

Q. What is your desire now, Sam?—which eighty do you want to try for?

Mr. George: We object to the form of the question, as to what land do you want.

Mr. Veasey: I submit the question is a proper one.

Mr. Bixby: Ask the question.

By Mr. Veasey:

Q. Which eighty do you want to try to get?

A. North eighty.

Q. If we tell you that you have a good chance to get it do you want to try to get it?

A. Yes, sir.

Q. You understand that if you do not get the north eighty, that provision has been made for fil-ing out your allotment by taking part of the south eighty?

A. Yes, sir.

Q. Have you received any part of that \$2700.00?

A. No, sir.

Mr. Veasey: I want to object to any interrogation of this witness by the attorneys for Ella E. Heady with a tendency to cause this boy to withdraw his contest on this north eighty, to which they have an adverse interest.

Mr. Bixby: We will not pass on that until we see what kind of questions they are going to ask.

Cross-examination.

By Mr. Hastings:

Q. How long have you been in Bartlesville this time?

A. Come in last night.

Q. What time?

A. About eight thirty.

Q. Did you go to see your grand-mother and step grand-father last night?

A. No I didn't go out last night.

Q. Who did you come in with?

A. With those people.

Q. What people?

A. Bal Thompson, Conrad and Harley.

416 Q. Did you know Bal Thompson here in Bartlesville?

A. Yes sir.

Q. Did you know Conrad?

A. Yes sir.

Q. Did he live here?

A. No sir.

Q. Where did you meet him?

A. Arkansas City.

Q. What does he do there?

A. I don't know.

Q. How did he happen to be in company with you?

A. Just come with me.

Q. Did he happen to stop out there with you?

A. Lives out there.

Q. Well, did you board with him?

A. No, I didn't board with him.

Q. How does he happen to be in company with you down here?

A. Just happened to all come down together.

Q. What is this man Hartley's name?

A. George Hartley.

- Q. Where did you get acquainted with him?
A. Out there, too.
Q. Have you been in company with these three people out there at Arkansas City?
A. Yes sir.
Q. All the time?
A. No, not all the time.
Q. Was Hartley with you all the time you was in Arkansas City this last time?
A. Yes.
Q. Conrad?
A. Yes.
Q. And Bal Thompson?
A. Yes.
Q. And all three came with you over here?
A. Yes sir.
Q. Where did you stay here last night?
A. Out south of town, Thompson's.
Q. How close is that to your grand-mother's?
A. About a mile.
Q. They don't live much more than a mile from town do they, and you were out south of town?
A. Some where near that; I don't know how far it is.
Q. Did you go to the south part of town and stay last night?
A. Yes.
Q. You was in sight of your grand-mother's house in day time?
A. No sir.
Q. Couldn't you see their house this morning?
A. No sir.
Q. Who went down to stay with you last night?
A. Just me and Bal Thompson.
Q. Did Hartley and Conrad go down there?
A. No sir.
Q. Have you seen them today?
A. Yes sir.
Q. Have they been in company with you today?
A. No.
Q. Hasn't Bal Thompson been around you any today?
A. Yes sir.
Q. They were all around you until this proceeding opened this morning?
A. Yes sir.
Q. Who paid your expenses out there at Arkansas City?
A. They paid them.
Q. Do you go directly from Muskogee to Arkansas City, the last time you were down before the Commissioner, back to Arkansas City?
A. Yes sir.
Q. In whose company, do you know?
A. I went out there with them and stayed.
Q. Did you go back from Muskogee with Bal Thompson?

A. Yes.

Q. Who paid your way back?

A. Don't know who done it.

Q. These other fellows paid it, or the Delokee Company?

A. Yes.

Q. Did some of their members pay it,—some of their members along?

A. Yes sir.

Q. Who else was along?

A. Hartley and Conrad.

Q. Were they all at Muskogee?

A. Yes.

Q. And have been at Arkansas City since, have they?

A. Yes.

Q. They came back with you when you came here last night, did they?

A. Yes.

Q. Where was the first place you went last night when you got off the train?

A. First place I went was up there in that place.

Q. Who with?

A. These fellows.

417 Q. Veasey & Rowland?

A. Yes sir.

Q. That was just after the train came in?

A. Yes.

Q. Who went up there with you?

A. Thompson and Jim Gray, all of them.

Q. And Conrad?

A. Yes sir.

Q. And Hartley?

A. Yes sir.

Q. All of them up there in Veasey & Rowland's office?

A. Yes.

Q. Anything said as to where you should stay last night?

A. No.

Q. Why did you go to Bal Thompson's?

A. Because I was asked down there.

Q. Why didn't you go to see your grand-mother?

A. Didn't want to walk down there. Suppose I could have gone if I wanted to.

Q. Didn't you always go to see your grand-mother before, after you came back on a trip off?

A. Yes sir.

Q. How long have you been gone without seeing her this time?

A. Four or five months.

Q. Were you ever away that long before in your life?

A. No.

Q. Have you a watch?

A. Yes sir.

Q. Will you let me see it, please?

A. No sir.

Q. Have you a picture in your watch?

A. No sir.

Q. Whose picture is that in your watch?

A. I have no picture in there.

Q. Why don't you open it and show us?

A. Don't want to show it.

Q. Don't want us to see the picture?

Mr. Veasey: We submit that that is not fair.

Mr. Hastings:

Q. Open face or hunting case?

A. Something like that.

Q. Hasn't it got a picture on the inside of it?

A. No sir.

Q. Did it ever have?

A. Yes sir.

Q. When did you take it out, Sam?

A. I just taken it out.

Q. When?

A. This morning.

Q. Where did you take it out, Sam?

A. That is for me to know.

Mr. Rowland: We object to that line of cross-examination: It can be of no service to either side.

By Mr. Hastings:

Q. Where were you when you took it out this morning?

A. Up the street.

Q. In any one's office?

A. No.

Q. What caused you to take it out, Sam?

A. I just took it out.

Mr. Bixby:

Q. Sam, do these people being in here embarrass you?

A. Yes.

418 Mr. Bixby: I will ask the crowd to please retire while this witness is testifying.

Mr. Rowland: So far as the attorneys for contestee are concerned, Messrs. Hartley and Conrad have not been subpoenaed as witnesses, and since they are large stockholders in the Delokee Gas & Oil Company and possibly directors, we think they should have the privilege of remaining in the room during this investigation.

Mr. Hastings: The proposition was to exclude all persons while Same Bob was testifying. In addition to that, the Delokee Oil Company is not a party to this conversation, so far as the record shows.

Mr. Bixby: The Commissioner simply excluded those people to keep from embarrassing Sam Bob.

Q. Do these people embarrass you any, Sam?

A. No.

Mr. Hastings: Under the peculiar circumstances in this case, and in view of the fact that the testimony discloses the unusual proceeding of taking this man away from Muskogee, and inasmuch as the testimony of this witness shows they have been in company with him at Arkansas City, and inasmuch as the testimony discloses that they took him to a place instead of going to his step grand-father's, and we submit inasmuch as others are being excluded, that certainly these parties should not be permitted to stand and stare at this witness, particularly in view of the fact that they are not parties to the case.

Certainly there can be no good reason why they should not be excluded, and there is no good reason why they should wish to remain in this room.

Mr. Bixby: I guess I will ask everybody not participating in the hearing to please retire.

By Mr. Hastings:

Q. Whose picture was that in your watch, Sam?

A. That's for me to know whose picture it was.

Q. When did you put it in there, Sam?

A. Been in there quite awhile.

Mr. Bixby: What do you propose to show by that testimony?

Mr. Hastings: I want to be absolutely frank with the Commissioner. I am going to make a statement upon information
419 which I have received and believe. We are informed that there was a girl of loose habits who at one time lived in the town of Bartlesville, and we have reason to believe that she was in the employ of the Delokee Company, and that Sam Bob was met by this girl here in Bartlesville where he got acquainted with her, and as occasion arose, she was shifted to Oklahoma City, where he also met her, and where, of course, he was glad to go and remain. We have been advised that she later had been to Arkansas City, and that is the means used to keep the witness, Sam Bob, in Arkansas City. On this preliminary question, knowing that the witness would be reluctant, we have had to propound a number of questions to him in order to lead up to this question and to develop the truth, and in order to develop the truth we have had to develop facts with reference to it.

We are advised, not knowing the name of the girl, that he had her picture in his watch, and that we could find out perhaps who she was by having him to show the picture which he had in his watch, and in that way we could get other witnesses — would corroborate our statements.

Mr. Bixby: Go ahead with the examination.

By Mr. Hastings:

Q. Will you give us any reason for taking that picture out this morning, Sam?

A. Just because I didn't want it in there.

Q. What was the name of that girl whose picture was in your watch, and that you took out of your watch this morning?

A. You wouldn't know her if I would tell you.

Q. When did you see her last, Sam?—Tell the truth, just straight facts?

A. I don't like to tell you.

Q. Go ahead and tell us; we will be through in a minute,—When did you see her last,—straight truth about it?

Mr. Rowland: In view of the fact that the attorney for Contestant has made a preliminary statement relative to what he believes an undue advantage taken of this boy, we submit that before this boy is subjected to such an examination as he is now undergoing that there should be some positive proof submitted in support of the allegations which he has made. If he can make a foundation for the introduction of the evidence which he is now seeking to obtain, it might possibly be a fair sort of examination, but we do not believe it is under the circumstances, and ask that that feature be given consideration.

Mr. Bixby: I take it that no one has charged Sam Bob with any dereliction of conduct in regard to this matter, but that it is perhaps of some moment to ascertain if accusations of this kind are
420 true or false, and I know of no other way that the attorneys representing that side of the question can draw this matter out except through an examination of such nature as this, and I see no objection to the examination that is being made along the lines that are being followed.

If Sam Bob has been sequestered through the aid and agency of a woman who is hired by any Oil Company or any body, I think it would be well for us to know it, and I know of no other way in which it can be brought out. They state they do not know the name of the woman.

Sam Bob would not be the first man that was influenced through an agency of that kind, and there is no reason why he should not tell us, that I know of, if this is true or if it is not true.

By Mr. Hastings:

Q. Sam, now tell us the name of that girl whose picture was in your watch, that you took out this morning?

A. I wouldn't tell you.

Q. How long has the picture been in there, Sam?

A. Quite a while.

Q. Did you have one on both sides of your watch?

A. No, sir.

Q. Where did you say you got it, Sam?

(No response).

Q. Get it at Oklahoma City?

A. Got it at Arkansas City.

Q. When did you get it, Sam?

A. I don't know when I got it; been quite awhile ago.

Q. Did you get it while you was up there before you went to Muskogee the last time?

A. I had it before that time.

Q. Did you meet this girl down at Oklahoma City?

A. No, sir.

Q. Did you see her in Shawnee?

A. No, sir.

Q. What town in Oklahoma did you see her?

A. Never saw her in Oklahoma.

Q. You saw her in Bartlesville a year or two ago, didn't you?

A. No, sir.

Q. Did you never see her in Bartlesville?

A. No, sir.

Q. Never saw her here in Bartlesville?

A. No, sir.

Mr. Bixby: If this is some woman that Sam got acquainted with in the ordinary course of events, it does not seem to me that it is material to anything you want to show. It would be well to find out how he got acquainted with her.

By Mr. Hastings:

Q. Who introduced you,—or how did you get acquainted with this girl at Arkansas City?

A. Just happened to be there, time of Carnival.

Q. Who was with you at the time you got acquainted with her?

A. I was with myself when I got acquainted with her.

Q. Bal Thompson with you?

A. Not then.

Q. Si Johnson?

A. No.

Q. None of them?

A. Wasn't with me.

Q. Are you willing to give us her name?

A. It wouldn't be any use for you to know.

421 Q. What street does she live on?

A. South-Summit.

Q. Who does she live with?

A. Her folks.

Q. What is her father's name.

A. I don't know. I suppose I'll have to tell you all their names soon.

Q. Can you give us their names?

(No response).

Q. Who paid your expenses there at Arkansas City?

A. The Company.

Q. Did they pay your board?

A. Yes, sir.

Q. Where did you stay while you were there?

A. Commercial house.

Q. Did you board there all the time?

A. Yes,—I didn't board there, I roomed there.

- Q. Took your meals at a restaurant?
A. Yes, sir.
Q. Where is this girl now?
A. She is over there.
Q. Did you leave her there?
A. Sure I left her there.
Q. When did you see her last,—Saturday?
A. No, sir.
Q. Day before?
A. Let me see,—yes I seen her Saturday about 12:00 o'clock.
Q. Is she a white girl?
A. Yes, sir.
Q. You are not willing to give us her name?
A. Well, it wouldn't do no good.
Q. You have no objection to telling us?
A. No sir. It was Miss Alta Steiner, is what her name is.
Q. You never saw her except in Arkansas City?
A. No, sir.
Q. You never saw her here?
A. No, sir.
Q. Never saw her in Oklahoma City?
A. No, sir.
Q. Where was Bal Thompson the night you met her?
A. Right around in the crowd somewhere.
Q. He had been with you up to the time you met her?
A. Most of the time.
Q. Where did she stay at that time?
A. At home.
Q. How soon after you met her before you went down to her house?
A. I went down there?
Q. Yes,—that night?
A. No.
Q. How soon thereafter?
A. About a week.
Q. Who went down with you to show you the way?
A. I already knew where she lived; I was acquainted with her.
Q. How did you get acquainted with her?
A. Just happened to meet her.
Q. How did you find out where she lived?
A. Just happened to be driving along there.
Q. Who were you driving with?
A. Bal Thompson.
Q. And he showed you where she lived?
A. No sir; I had been along there before,—on the same street the depot is on.
Q. Did she just come up and speak to you, or how did you happen to meet her?
A. Just happened to be throwing confetti at each other.
Q. No body introduced you?
A. No, sir.

Q. Aren't you willing to tell us how you happened to go down to her place.

A. I didn't go down there that night. Walked around with her that night a little while.

Q. Did you meet Bal Thompson or either of these fellows that night?

A. No, sir.

Q. Do you expect to stay here now or are you going back to Arkansas City?

A. Stay out here awhile.

Q. Going out home, are you?

A. Yes, sir.

Q. Are you going out home tonight?

A. Yes; I don't intend to stay at home all the time.

Q. Are you going tonight?

A. Yes, going home tonight.

Q. Out to your grandmother's?

A. Yes sir.

Q. That is what you want to do, is it?

A. Yes.

422 Examination.

By Mr. Veasey:

Q. Where do Mr. Hartley and Mr. Conrad live, do you know?

A. Arkansas City.

Q. Do you know what business these two men are in?

A. One of them is a banker.

Q. Which one?

A. Hartley.

Q. You don't know what business the other man is in?

A. No, I do not.

Q. Sam, why did you stay in Arkansas City this last time and the time before?

A. Just because I didn't want to stay around here and be talked to death. First one would come and tell me things and then another; that is the reason I stayed away. One would come and tell me this and the other that.

Q. You wanted to stay away to escape that annoyance?

A. Thought it best for me to stay away.

Q. You were free to come if you wanted to?

A. Yes sir.

Q. Where were you last week—were you in Arkansas City all the time?

A. Yes, I was there part of the time.

Q. Where were you the rest of the time?

A. I had been out a hunting, out south of Arkansas City about 33 miles. I come in about last Monday week.

Q. Bal Thompson was with you?

A. Bal Thompson and Art Voiles.

Recross-examination.

By Mr. Hastings:

Q. Where does Bal Thompson live?

A. Down on the north eighty.

Q. Down here below Bartlesville?

A. Yes sir.

Q. An oil man?

A. Yes sir.

Q. A man of a family?

A. Yes sir.

Q. Yet he has been out there all the time with you at Arkansas City?

A. Yes sir.

Q. Went back with you from Muskogee?

A. No, didn't go with me the last time.

Q. Went on directly afterwards?

A. Came in a few days after.

Q. Stayed with you and came back with you last night?

A. Yes.

Q. What does Bal do up there?

A. Just walk around together—monkeying around together.

Examination.

By Mr. Veasey:

Q. Did you spend any of your own money while you were gone?

A. Yes.

Q. How much did you spend, a hundred dollars?

A. Something near that.

By Mr. Hastings:

Q. How much of your money did you have to spend?

423 A. I don't know how much I did spend; I spent about a hundred dollars, I think.

Q. How did you get that hundred dollars—did you have it with you?

A. No, I had it here.

Q. Did you check it out here?

A. I wired them.

Q. Who did you wire?

A. The banks here—Citizens bank.

Q. About the wiring—who did the wiring, Bal Thompson?

A. No.

Q. Who did?

A. I got Hartley to wire.

Q. Since you were at Muskogee the last time?

A. Yes sir.

Q. Did you have money on deposit at the Citizens Bank and Trust Company?

- A. Yes, I got some.
Q. How much.
A. I told you awhile ago a hundred.
Q. Where did you get that money? That hundred?
A. I got it here.
Q. Who from?
A. No use to ask me twice the same thing.
Q. Who did you get it from?
A. From the Citizens Bank.
Q. Who did you originally get it from?
A. How did I get it?
Q. Yes?
A. I told you I wired for it.
Q. How did you get it in the first place?
A. For that north eighty.
Q. Who gave it to you?
A. Fred McDaniel.
Q. Some of your original money?
A. Yes sir.
Q. Was that turned over to you by Wallace Thursday?
A. Yes.
Q. When?
A. I don't know that it had been turned over to me.
Q. Did Bal Thompson pay your expenses up yonder?
A. Pay my expenses?
Q. Yes?
A. Yes.
Q. How much of that money did you wire for at one time?
A. For a hundred at one time.
(Witness dismissed.)

WILLIAM McEWIN, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Rowland:

- Q. What is your postoffice?
A. Ramona.
Q. Age?
A. Sixty.
Q. You are a member of the Delaware tribe of Indians?
A. Yes sir.
Q. Are you acquainted with A. H. Norwood?
A. Yes sir.
Q. How long have you known him?
A. Pretty near ever since when he come to this country.
Q. Do you know Sam Bob?
A. Yes sir.
Q. Do you know Wallace Thursday?
A. Yes sir.

Q. Do you know Jim Shaw?

A. Yes sir.

Q. Please state to the Commissioner where you were on or about the 4th day of last July?

A. I was at home.

Q. Where did you go from Ramona?

A. Jim Shaw come down to my place and I come up with him next day.

Q. Up to where?

A. Dewey.

Q. That is on the 5th of July?

A. Yes sir.

424 Q. Who is Jim Shaw?

A. Delaware.

Q. Delaware Indian?

A. Yes sir.

Q. Is he related to you in any way?

A. Yes, he is my nephew.

Q. Did you see A. H. Norwood while you were in Dewey the 5th day of July?

A. Yes sir.

Q. Any one else with you at the time you talked with him?

A. No, me and my nephew was together talking along the streets when we met him.

Q. Just tell the Commissioner the conversation you had with Mr. Norwood?

Mr. Hastings: We can't see that this will serve any useful purpose. It is entirely hearsay, irrelevant and immaterial, because no foundation has yet been laid for impeachment, and it is not shown that Sam Bob or Wallace Thursday or any one else interested participated during that conversation, or that it affects this contest in any way whatever.

Mr. Rowland: If the Commissioner please, the principal purpose of this investigation is to determine whether or not the charge that I made on information and belief in Muskogee that Sam Bob had been influenced to sign the relinquishment of his rights and the waiver of the right of appeal by fraudulent representations and by undue influence, and it is in support of that charge that I wish to introduce the testimony of this witness in connection with this charge against A. H. Norwood, who appeared there as Sam Bob's attorney, and who was admittedly also the attorney of the Test Oil Company.

Mr. Hastings: If the Commissioner please, they are now trying to prove a conversation between A. H. Norwood and this witness, and it is not averred that Sam Bob was present, nor that Wallace Thursday was present, nor that any body in any way affected by this conversation was present, or were influenced in any manner thereby, and it will therefore, be clearly immaterial and irrelevant. If this conversation can be gone into, we can go into conversations that have been had between parties without reference to this controversy on

this point, and on and on. Unless it can be shown that Bob or Thursday were present, that is on the theory of an uncommunicated threat and is not admissible. If none of the parties were present at the time, I can not possibly see upon what ground this conversation would be admissible.

Mr. Rowland: I shall connect this conversation with Sam Bob, and with Wallace Thursday, and with A. H. Norwood, and also with the charge of fraud that I made in Muskogee.

Mr. Bixby: You may go on.

425 By Mr. Rowland:

Q. State in your own way what conversation you had with A. H. Norwood in Dewey, at the time we were talking about?

A. He told me he — glad to see us fellows, said "I wanted to write down there to you to have you come up." I says al-right. He wanted us to go down to Wallace's and tell Mr. Wallace that please let the boy file on some other land and don't have no contest. Says he never win that land; they got contest against it. And that is all he told me. And I went on down there to Mr. Wallace's house, and he never mentioned it. I says you well acquainted with me, and I says did I ever tell a lie to you any way. I says would you believe me if I would tell you something. He says yes.

Q. What else was said there about your going down to see Wallace?

A. That's all, just tole me to go down and make Wallace change filing.

Q. Did he offer to pay you anything for that service?

A. Hundred dollars, that's all.

Q. Did he tell you what to tell Wallace and Sam about these filings?

A. No, he never say what part of the lands at all.

Q. Did he say anything about the Commission?

A. No sir.

Q. He agreed to pay each of you one hundred dollars if you would go down and induce him to change?

A. No sir, he didn't seem to notice me at all. He says you can go up there and see him yourself.

Q. Who do you mean?

A. Sam Bob.

Q. Who said that?

A. Wallace.

Q. When you went to see Wallace, he said he had nothing to do with it?

A. Yes sir.

Q. Did you see Sam Bob?

A. Yes sir.

Q. What happened?

A. We seen him standing there and I took him around to one side, and I say "Sam you have a little trouble with your filing"; he says "yes." I says "how would you like to change your filings where there ain't no contest." He says "I done got it fixed up."

Q. You were not successful in getting him to change his filing?

A. No sir.

Cross-examination.

By Mr. Hastings:

Q. You made no misrepresentations to Sam?

A. No.

Q. You never told him anything but what you told here?

A. No sir. I says "would you like to change filings for land that ain't got no contest on it."

Q. He said he got it fixed up?

A. Yes sir.

Q. You didn't know what he referred to?

A. I didn't know anything about it.

Q. That is all the talk you had?

A. Yes sir.

Q. You have related all the conversation you had with Norwood?

A. That's all.

Q. Jim Shaw was with you during all of this conversation you had with Norwood?

A. Yes sir.

426 Q. You two were together all the time?

A. Yes sir.

Q. You heard all he said to Jim Shaw?

A. Yes sir.

Q. He never told you to make any misrepresentations at all?

A. No sir.

By Mr. Rowland:

Q. State whether or not Norwood told you that it would be to the best interests of Sam Bob to withdraw from the north eighty?

A. No sir, didn't say that.

Q. Did he tell you it was to his best interest to get some land where there was no contest?

A. (No response.)

By Mr. Hastings:

Q. Best interest of Bob to get some land not in litigation?

A. Yes sir.

(Witness dismissed.)

(Stenographer relieved by Geo. H. Lessley.)

Department of the Interior,
Commissioner to the Five Civilized Tribes.

BARTLESVILLE, I. T., November 26, 1906.

Cherokee Allotment Contest No. 830.

ELLA E. HEADY, Contestant,

vs.

SAMUEL BOB, Contestee.

(A continuation of the notes of Stenographer S. T. Wright.)

JIM SHAW, being first duly sworn by Commissioner Bixby, testified as follows on behalf of Contestee:

By Mr. Rowland:

Q. Your name is Jim Shaw?

A. Yes sir.

427 Q. Where do you live?

A. Up to Copan.

Q. You are related to William McHewin?

A. Yes sir.

Q. You are his nephew?

A. Yes sir, he is my Uncle.

Q. State whether or not you spent the 4th day of July, 1906, down at Ramona, do you remember?

A. Yes sir, we were down to Ramona the 4th of July.

Q. Where did you go the following day?

A. I was down to Ramona the 4th of July.

Q. Where did you go the next day?

A. We come up to Dewey.

Q. Do you know A. H. Norwood of Dewey?

A. Yes sir.

Q. Do you know Sam Bob of Bartlesville?

A. Yes sir.

Q. Do you know Wallace Thursday?

A. Yes sir.

Q. State what conversation, if any, you had with A. H. Norwood?

A. We came to Dewey the 5th of July and I think he told us to go down to Wallace's and get the boy to file on some land, I think, couldn't say exactly which *the* allotment, but then anyway we was to get him to change the filing.

Q. Who was present when you talked with Norwood, anybody else besides yourself?

A. I think we were in the hall up there at Bartles.

Q. Store?

A. Yes sir, in that big building.

Q. Who was with you when Norwood was talking to you?

A. Uncle Billy.

Q. You refer to William McHewin?

A. Yes sir.

Q. Were you to get paid for coming down to see Wallace,—state whether or not you were to receive any money for coming down to see Wallace?

A. Well he said he would give us \$100 apiece if we could get him to file on any land down there. They furnished us a team.

Q. Did you see Wallace?

A. Yes sir, we went down there, he don't more talking then I did.

Q. Who?

A. Uncle Billy.

Q. What did you people tell Wallace?

A. We just only told him we would like to get the boy to change filing, what Norwood told us.

Q. What did Wallace say?

A. He said he don't know, he didn't have no power over the boy, but we could go and see the boy.

Q. Did you talk to Wallace any more?

A. That is about all I can remember.

Q. Then where did you go?

A. We went over up the Creek to where the picnic was.

Q. Did you see the boy there?

A. Yes sir, we found him over there.

Q. What did you say to him?

A. Well Uncle Billy done the talking, and I stood by him, and he told him that Norwood wanted him to change his filing if he would, but he never paid no attention to him, nor neither one of us, finally he just went off and so we left him.

Q. You couldn't do anything with him?

A. Couldn't do a thing with him.

Q. What reason did you state to Wallace for suggesting the filing,—changing the filing?

A. Why I don't know exactly, but then it is supposed to be he was a guardian.

Q. Wallace was guardian?

A. Yes sir.

Q. What reason did you suggest to Wallace as a good reason for the changing the filings?

A. Why we told him it was his say so, that he was — say so about it, make him if he was willing to.

Q. You thought Wallace had the control of the boy?

A. Yes sir.

Q. Did Norwood state why it was that he wanted the boy to change his filing?

A. Why I don't know whether I could exactly tell which, but anyways,—not exactly, I couldn't exactly tell you, he could
428 tell you better than I could.

Q. Can you tell it in your own words?

A. Yes sir.

Q. Tell it in your own words?

A. Well I wouldn't know how to explain it to anybody, he wanted the filing changed?

Q. Why was it?

A. I couldn't say where.

Q. Why?

A. Why I don't know that part of it.

Q. He offered to pay you \$100 apiece if you got the change made?

A. Yes sir.

By Mr. Veasey:

Q. Are you a full blood Delaware?

A. I pass for full blood.

Q. How about William McHewin, he enrolled as such?

A. I don't know whether he is or not.

Q. How long have you known Wallace Thursday?

A. From in Kansas when I was living with Uncle Connor.

Q. How many years ago has that been?

A. Pretty near 40 years.

Q. Has William McHewin known him that long?

A. Yes sir.

Q. How long have you known Sam?

A. Since we moved down here to the Cherokee Nation.

Witness excused.

JESS L. HARNAGE, being first duly sworn by Commissioner Bixby testified as follows on behalf of Contestee:

By Mr. Veasey:

Q. State your name?

A. Jesse L. Harnage.

Q. How old are you?

A. I think just 31 past, last September.

Q. Where do you live?

A. Tulsa.

Q. Are you a citizen of the Cherokee Nation?

A. I am.

Q. By blood?

A. I am.

Q. What is your business or profession?

A. I am a lawyer.

Q. How long have you been so engaged?

A. Since September, 1903.

Q. Are you familiar with the allotment which is in contest between Sam Bob and Ella E. Heady?

A. Yes sir, I am quite familiar with it.

Q. Do you know anything about the 80 acre tract just south of it?

A. I do.

Q. As a matter of fact haven't you filed on that south 80?

A. I have.

Q. State to the Commissioner the exact circumstances and conditions under which that filing was made?

A. Well it occurred sometime four or five days after the Land Office opened in 1904, in May I came down to the office one morning, and you came and asked me if I would like to get an oil allotment and you introduced me to Mr. Coombs and Mr. Harned. At the time you stated to me that you represented the Delokee Oil Company, and you were bound to protect in my filing upon the south 80 the interest of Sam Bob and Wallace Thursday. There was no more definite understanding about it excepting that I went into it with the understanding that my filing on the south 80 was subject to the rights of Samuel Bob on the north 80. Mr. Harned went with me to Bartlesville that day, or rather started with me at that time, and it was the understanding between myself and Mr. Harned that the Company would pay the expenses of securing the allotment filing, as was customary among oil companies at that time. We went to Bartlesville for the purpose of placing
429 some improvements upon the land, and right here I would say that I further learned that morning, before I started that the citizenship of Wallace Thursday was in doubt; that he was not only an intermarried, but even the question of whether or not he was intermarried was in doubt and upon that understanding between myself and Mr. Harned and Mr. Veasey we started to Bartlesville. Mr. Coombs was also present but he had very little to say, in fact Mr. Harned and I did most of the talking, excepting what little Mr. Veasey spoke in the morning, and from that time on my conversation was largely with Mr. Harned. We went to Bartlesville and in company with a Mr. Evans and Mr. Harned, I believe there was another person along but I can't remember who it was, we went out to the Wallace Thursday home and secured posts from Thursday himself. Mr. Evans and myself both spoke to Wallace Thursday about the purpose of our visit to his place, and he was paid for the posts by the Company according to the agreement and we proceeded to sharpen and put a string of posts around the south 80. I don't know just exactly what Evans did state to Thursday because I was standing near but didn't pay much attention to it. I know he was talking to him and said something to him about my part. I was introduced of course to Thursday by Evans and he told Thursday.

By Mr. Hastings:

Q. Did you hear that or Evans tell you that or did you hear it?

A. Why I heard it, I couldn't detail it.

Q. Tell what you heard, not what Evans told you?

A. Evans didn't tell me anything. That I was a nephew of C. L. Harnage who had filed on 40 acres somewhere down in that neighborhood. Thursday stated that he knew C. L. Harnage and I stated to Thursday that we were out there for the purpose of putting some fence posts upon that south 80, and that we intended to file on it, or rather I should, and that it would be done for his and Bob's

protection. That is the extent of any explanation to Thursday at that time so far as I know.

By Mr. Veasey:

Q. In the original arrangement made between myself acting for the Delokee Gas and Oil Company and yourself was there any provision for reimbursement to Wallace Thursday in the event you actually established your claim to the south 80?

A. Yes sir.

Q. What was that?

A. That arrangement was that Wallace was to have the use of the surface of the soil and a life interest in the well to be agreed on according to the terms of that contract that you have. A. I don't remember what they are specifically.

Q. Did you file after Wallace Thursday had filed on the south 80?

A. I did.

Q. Do you have personal knowledge of any other citizen trying to do the same as you were?

A. Yes sir, you stated to me that Houston Morgan would try to file on it and perhaps there would be another. I will just give you the history of the filing. We returned to Tahlequah and I entered the land office and presented myself to the proper clerk and was tagged out. I suppose you understand what tagged out means.

430 He prepared a slip put it on top of a hook left it upside down for filing clerk to take from it. Houston Morgan had just preceded me, he wanted the same thing and I sat down on one of the chairs awaiting the result, and Houston and I both were trying to watch each other because we knew what was up. I don't believe we waited very long, perhaps 20 minutes, Houston gets up and goes out of the Land Office and about the time he left John Rosson completed the filing of the Indian with whom he was working at that time and goes around to the files and there calls the name of Houston Morgan three times, and he didn't respond and naturally he passed to the next slip and I responded. The filing proceeded from that time on. Houston came in a few minutes after very much vexed because he knew his name was really ahead of mine but on explanation of Mr. Rosson he went away satisfied. It was further my understanding at that time that the reason the Delokee people didn't want Morgan to file on the land was that he would not do it under the conditions they wanted him to. It, of course, was the understanding that when I filed on it that I should give them the lease and I did it.

Q. Was there any arrangement made to protect you in the event either Sam Bob or Wallace Thursday required the 80 you filed on?

A. Yes sir.

Q. State that?

A. That occurred sometime after the filing, it was a fact though as near as I can recall, I think the minutes book will perhaps show. Sometime afterwards I called your attention to the fact that in the event I should lose out I would be holding an empty bag, and you

suggested or I suggested, or somebody suggested the provision that was later adopted by the Company, which was in the event that I should lose everything, that the Company would then issue to me or give me 5000 shares in the Company.

Q. I am handing you Contestee's Exhibit "A" and I shall ask you whether or not you recognize that instrument?

A. I do.

Q. Is that your signature attached to that instrument?

A. It is.

Q. State to the Commissioner the circumstances under which that was drawn up?

A. Well as that contract shows it was executed subsequent to the filing, a little over a year I judge. Up to the time of the execution of that contract there was simply an understanding, oral understanding, of the conditions under which I had filed. You either wrote me or you told me that you were going to secure some orders of Court at Nowata, and that it would be necessary to reduce that understanding to writing, and asked me to be there on that date. I was there and that contract was made as a result of my visit.

Q. You know as a matter of fact the orders of Court were secured?

A. I do because I secured certified copies of them myself.

Q. State to the Commissioner, and upon this basis did you hold your allotment, what you will do in the event that any part of the north 80 is lost to Sam Bob by these contest proceedings?

A. I will carry out that agreement as in the contract.

Q. And you hold your allotment subject to those conditions?

A. That was the understanding; that is the understanding to-day.

Q. Did you file before or after Annie Martin?

A. I filed before she did.

Q. You knew the conditions or allegations of her complaint, do you?

A. I know nothing about it whatever.

Q. Are you in any way interested in the Delokee Gas and Oil Company as a stockholder at present?

A. Not at all.

Q. Have you ever been so?

A. No sir.

By Mr. Hastings:

Q. Jesse I believe you stated that you filed upon this south 80 subject to the rights of Sam Bob to the north 80?

A. I did.

Q. And if Sam Bob loses out in his contest on the north 80 why then you would have no defense as against him on the south 80; you filed subject to his rights?

A. That is the understanding.

Q. And the agreement?

A. Yes sir.

Q. I believe you stated also that when you came up here to look

at this land some 4 or 5 days after the Land Office opened in May, 1904, that Mr. Veasey and Mr. Harned and perhaps Mr. Coombs were with you?

A. No I didn't say that. I said Harned came up with me. Veasey and Coombs did not.

Q. Mr. Veasey remained at Tahlequah?

A. Yes sir.

Q. The Delokee Oil Company paid the expenses of that trip?

A. I did not state that, Harned paid most of the bills coming up and I paid them going back.

Q. What about railroad fare?

A. I believe he did buy the tickets. We came to Fort Gibson and from Fort Gibson to Oologah and from there to Collinsville and then on up here.

Q. Didn't you state awhile ago that they paid the bills because it was customary then where they expected to take oil leases?

A. I stated that was the understanding but I didn't state that they did do it.

Q. It was the understanding they made?

A. Yes sir.

Q. It was the agreement they made?

A. Yes sir.

Q. Well who paid the expenses of putting these posts around this south 80?

A. They paid them.

Q. I believe you stated,——?

A. You must understand those posts were put around there by myself. I drove some of them myself, as I say there was another man helped but I don't know who else.

Q. But aside from your own work they paid the other expenses?

A. Oh yes.

Q. I believe you stated this man S. E. Evans did most of the talking with Thursday when you went to get the posts?

A. Well he talked with Thursday, I don't know whether he did most of the talking or not.

Q. Didn't you say awhile ago that he did the most of it; that you didn't do much of it?

A. So far as I know he talked with Thursday and so *was* I.

Q. State whether or not that was the statement that you made in your direct examination?

A. I don't recollect whether I said most or not.

Q. Is that correct or not?

A. I should think it would be correct, I am not positive about it.

Q. Didn't you state then that when you secured the posts from Thursday that you and Evans told Thursday it was for his protection?

A. Yes sir.

Q. You didn't tell Thursday then in detail how it was for his protection, but just told him it was for his protection and quit?

A. No sir, we didn't go into detail. Simply told him it was for his protection, that we would do what was right.

Q. That is all he did in putting the posts around there,—was concerned at that time?

A. So far as I know it is. What was told him afterwards
432 by Evans out of my presence of course I don't know.

Q. Now in your application to file a contest upon this land you didn't make anything as a matter of record before the Commission to the Five Civilized Tribes at Tahlequah in May, 1904, to the effect that the filing of your contest was subject to the rights of Sam Bob or subject to the rights of Wallace Thursday, did you?

A. We did not.

Q. I will ask you if you didn't have to then swear that you were the owner and in the possession of those improvements upon that land, the south 80, at the date that Wallace Thursday had made application to file upon it in order to file your contest?

A. No sir.

Q. I will ask you if you stated that in your complaint of contest?

A. I don't remember just how that read. I know that there was some question raised by the Law Clerk Davidson as to whether or not the ground of contest should be made that I held improvements upon it or that Wallace Thursday's citizenship was in doubt, and just how we settled that at that time I don't recollect.

Mr. Hastings: I will ask now if a copy of this complaint of Jesse L. Harnage vs. Wallace Thursday on file in the office of the Commissioner to the Five Civilized Tribes, be introduced and made a part of the record in this case.

Mr. Bixby: That will be done.

Witness: It is my recollection, I won't be positive about that, that Davidson had the contest, based or rather insisted on it, that it be based on Wallace's citizenship being in doubt.

Q. Had Wallace already filed on this land before you came to Bartlesville?

A. Yes sir, that was my understanding.

Q. He had made application to file on his land prior to your coming here?

A. Yes sir.

Q. And before you had any posts at all put around the south 80 either by yourself or through anybody else?

A. Yes sir, that was my understanding that he had completed his filing at that time.

Q. When did you execute an oil lease to the Delokee Oil Company, how long after you made this application to file on this land?

A. Sometime afterwards, two or three days.

Q. Was any bonus paid you?

A. None whatever.

Q. The agreement was you were to get the 10% royalty?

A. That is all.

Q. What other consideration besides the payment of these expenses and the inclosure of the tract of land with posts and the

securing the permission of Wallace Thursday for you to file on this land?

A. You might say that was all of the consideration.

Q. Now you never executed this written agreement that has been referred to here which is dated June 21, 1905, until after the nine months had expired after you had made application to file on the land, did you?

A. No sir.

Q. Had you ever entered into a written contract before then?

A. No sir, this is the first written contract.

Q. You didn't nor Mr. Veasey either regard that as legal or binding?

A. I did, I don't know how he did.

433 Q. Did you and Mr. Veasey tell Wallace Thursday at that time that he had a right to dispose of the improvements upon the south 80 or was that discussed?

A. That wasn't discussed as near as I can recollect.

Q. Mr. Harnage, refreshing your memory, don't you know you were at Nowata at the time that instrument was executed?

A. Yes sir, of course I was.

Q. Were you there at that time attempting to get an order from Wallace Thursday, the guardian of Sam Bob, to get him to transfer these improvements to you?

A. No sir, I wasn't there for that purpose.

Q. Don't you know Mr. Veasey was there for that purpose?

A. I stated in my direct examination that Mr. Veasey wrote me that they were going to secure an Order of Court selling to me the improvements of Sam Bob upon the south 80.

Q. Don't you know this contract was made by Wallace Thursday, by him in his individual capacity and this was not submitted to the Court nor intended to be submitted to the Court for approval by it?

A. Well I will have to answer your question in part. It wasn't so far as I know the purpose of any one to submit that to the Court. I don't recollect just how it reads.

(Hands witness paper which he reads.)

Q. Now refreshing your memory after reading it don't you know it was made by him individually and not as guardian?

A. Yes sir, but at the same time it was the understanding that it was for the benefit of Sam Bob because the contract goes farther and reads that it is made for the benefit of Sam Bob.

Q. Didn't you state just now that you were trying to get an Order of Court of these improvements from the Court to you, from Wallace Thursday as Guardian of Sam Bob, and haven't you also stated that this contract was made with Wallace Thursday and not intended to be submitted to the Court for approval?

A. I never have stated that I was trying to get an Order of Court.

Q. You stated Mr. Veasey was with your knowledge?

A. That is true.

Q. Didn't you know at that time that you couldn't make these

side agreement- for the surplus Delaware lands or lands that had been certified as surplus Delaware lands, and that it was illegal and that it was necessary for you, as well as the grantor, to make affidavit as to the amount paid for the improvements upon those lands and that no side agreement could be made legal?

A. That all is true for the land had been segregated as Delaware land.

Q. Didn't you know application had been made to have it segregated as Delaware land?

A. Wait until I answer your question. After the land had been segregated, the Delaware land, if I mistake not it was the purpose of the Order of Court to sell me those improvements, and further the purpose that they should be sold at the price placed upon them after they had been appraised by the Indian Agent, under the rules and regulations that you mentioned in your question.

Q. Then why was this contract of June 21, 1905, entered into at all if it was to be sold to you for the amount of the appraisal placed upon the improvements by the Indian Agent?

A. For the simple reason that we hadn't yet gotten to the point where the land was segregated as Delaware land and we couldn't execute at that time, or have executed a Delaware bill of sale, and so far as I know at that time this kind of an instrument was all we could draw up and it was the purpose of Mr. Veasey to
434 comply with the rules and regulations of the Department with reference to Delaware land.

Q. Well was Mr. Veasey then attempting to get an Order of Court to sell this land for Wallace Thursday, as the guardian of his wife and Sam Bob, before the land was certified as surplus Delaware land?

A. I don't know whether he was attempting to have the land certified before this or not.

Q. You made no inquiry about it?

A. No sir, and so far as what the orders reported to be, I think they will speak for themselves. You must bear in mind this Mr. Hastings.

Q. Was the Delokee Oil Company to pay for the improvements if you got them under the orders of Court?

A. That would have been in accordance with the original agreement.

Q. Was it your purpose to ask them to — it?

A. I would have done so if it had to the point if necessary. I would have expected it to be done.

Q. Have you got any stock in the Delokee Oil Company?

A. No sir.

Q. Have you got a contract for any?

A. Only that referred to.

Q. In the event you lose out you will have 5000 dollars paid up stock?

A. Yes sir, I guess the minute books will show that.

Q. \$5000 to be paid up?

A. It will be stock subject to the laws governing the corporation.

Q. Was it \$5000 or 5000 shares?

A. It was to be in the value of \$5000.

Q. That was the understanding?

A. Yes sir.

By Mr. Veasey:

Q. Why was this contract drawn up at the time those orders of court were secured, what was the purpose in drawing up that contract?

A. Well the purpose as I recollect was to give Wallace Thursday a contract or some written evidence of our understanding about this,—my filing on the south 80, and it was brought about by the fact that you were going to secure those orders. As near as I can recollect something like that.

Q. Those orders were acquired in due form were they not?

A. As near as I can recollect.

Q. Referring to these posts around the land by you, were those posts put there as against Sam Bob or Wallace Thursday?

A. What do you mean as against?

Q. Was the posts put there subsequent to the filing of Wallace Thursday?

A. Yes sir.

Q. Do you remember what purpose you meant to accomplish?

Mr. Hastings: I believe we ought to object to that as calling for a conclusion.

Mr. Bixby: The objection will be sustained.

Q. What was your purpose in putting the posts there?

Mr. George: I object to that, the record shows he filed a contest and he put these posts there.

Mr. Bixby: I think he can answer that.

A. Why being the procedure at that time as far as I know you had to have some improvements before you could file a contest on the land.

435 Q. Were you expecting any one else filing on this land?

A. Yes sir, of course, you stated you knew some other parties were trying to file on it.

Q. Did those posts have any connection with any one else filing on it?

A. Yes sir, under the law as I understand it, and I think as you understood it at the time, they would have given me a prior right over any one else to file on it.

Q. Excepting Wallace Thursday?

A. Excepting Wallace Thursday and Sam Bob.

By Mr. Hastings:

Q. Did Houston Morgan have any posts around this south 80?

A. If he did I don't know anything about it, but Houston Morgan was likely to file on the land any time he could get a chance so far as that was concerned.

Q. He wouldn't come at it as likely as you would?

A. He didn't seem to.

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Q. How did you know he was trying to file on the land?

A. Why how does a fellow know lots of things that are going on.

Q. Did he tell you?

A. He didn't but other parties did.

Q. Members of the Delokee Oil Company?

A. Why I don't know, Veasey told me they were after it. Houston came up to me after he saw he was ahead of me and he asked me what I was going to do and I told him I was going to file on the south 80, and he did, too.

By Mr. Veasey:

Q. Did he raise any fuss about it?

A. Yes sir, he did about the way he was treated. He said he wasn't treated fair but after it was explained to him he came up and apologized for it.

By Mr. Bixby:

Q. Do you know Annie L. Martin?

A. I do.

Q. Do you know anything about her claim to this 80?

A. I know nothing excepting what I have heard.

Q. Do you know whether she has any improvements on the land or not, or have ever purchased any?

A. I don't know as she has or not. I know of nothing of the kind.

Q. You know what her claim is to the land?

A. Well no I don't, to say directly speaking I don't know.

Witness excused.

JAMES GRAY, being first duly sworn by Commissioner Bixby, testified as follows:

By Mr. Veasey:

Q. State your name?

A. James Gray.

Q. Where do you live?

A. Bartlesville.

Q. How old are you?

A. 37.

Q. What connection have you, if any, with the Delokee Gas and Oil Company?

A. I am one of the stockholders.

Q. How long have you been connected with that Company?

A. Since it was organized.

Q. Are you familiar with the land in contest between Ella
436 L. Heady and Samuel Bob?

A. Yes sir.

Q. Are you familiar with the 80 south of that?

A. Yes, sir.

Q. And also the 160 acres of Mrs. Thursday?

A. Yes, sir.

Q. Were any kind of arrangements entered into between the Delokee Gas and Oil Company and Wallace Thursday for the lease of that land?

A. Yes, sir.

Q. About what time if you remember?

A. Sometime about the first of May, 1903.

Q. Who conducted the negotiations?

A. I did, myself.

Q. Directly with Wallace Thursday?

A. Yes, sir.

Q. Do you know whether the Delawares were permitted to file at that time?

A. No sir, they were not.

Q. What consideration was made between Wallace Thursday for these leases?

A. I was to pay him \$800 for his allotment his wife's, and Sam Bob's.

Q. How were those allotments located with reference to one another as you understood it at that time?

A. His wife was to file on the 160, Wallace on the 80 directly north of his wife's 160, Sam Bob on the north 80.

Q. Was any kind of a written contract entered into between yourself on one side associated with Mr. Evans and Mr. Coombs, on one side, and Mr. Harned, Mr. Hartley and Mr. Conrad on the other, relative to the money for the buying of these leases?

A. I think they were.

Q. State whether or not your signature is to this instrument which I hand you?

A. Yes, sir.

Mr. Veasey: We desire to offer in evidence contract identified by the witness.

Mr. Bixby: The instrument will be filed and marked Contestee's Exhibit "C".

Q. Was it in pursuance of that contract that you engaged with Wallace Thursday?

A. Yes, sir.

Mr. Hastings: I don't think he ought to ask that question—

Q. Do you recollect when the Land Office opened in 1904?

A. Yes, sir.

Q. About what time?

A. I think it was the second day of May.

Q. Do you know as a matter of fact whether any money was paid on that contract between the time you made it to Wallace Thursday for the Delokee Gas and Oil Company and the second day of May, 1904?

A. Yes sir, paid \$245.00.

Q. Was any of this money paid before this date of the alleged sale of April 1, 1904?

A. It was all paid, that is the \$245.

Q. Do you recollect the nature of my employment by the Delokee Oil and Gas Company in connection with this suit?

A. Yes sir.

Q. Do you remember who was present when the matter was first approached?

A. I think Mr. Coombs, Mr. Harned and myself.

Q. Was Wallace Thursday there that afternoon?

A. Yes, sir.

Q. Do you know whether or not the matter was gone into with any thoroughness?

A. Yes sir, I believe it was.

Q. What was the nature of the employment which I had with the Delokee Gas and Oil Company?

A. You were employed as their attorney, and also was the Attorney of Sam Bob in this contest case.

Q. What was the exact nature of my employment?

A. You were employed as the Attorney for the Delokee Oil Company and also as Sam Bob's Attorney, or rather Wallace Thursday as Guardian for Sam Bob at that time.

437 Q. In what connection with Wallace Thursday was my employment, what was I to do, if anything?

A. You were to look after this contest case between him and Ella E. Heady.

Q. Do you recollect whether or not any agreement was reached that evening as to how the filing should be done when the Land Office opened?

A. Yes sir, I think it was, as well as I remember.

Q. State that to the Commissioner?

A. Thursday was to file Sam Bob on the north 80; he was to file on the next 80 south, and his wife was to file on the 160 still south of that.

By Mr. Hastings:

Q. Didn't Mr. Veasey suggest that idea to you here as being the best way to file that contest case?

A. No sir, I don't think he did. I think that matter had been gone over between Wallace and members of the Company before Mr. Veasey came up here.

Q. You knew a contest case had been filed at that time?

A. Not at that time.

Q. You anticipated one would be filed?

A. Yes sir.

Q. You knew Wallace Thursday had sold, or at least had executed a Bill of Sale to Ella E. Heady for all of the improvements on the north 80?

A. Yes, sir.

Q. There was no written agreement between you and Wallace Thursday at that time?

A. Yes sir, I think there was.

Q. Have you that written agreement?

A. I haven't seen it for some time.

Q. Are you willing to swear positively there was?

A. No, sir.

Q. The only written agreement you know with reference to this is this one that has been introduced mentioned yourself?

A. There was no agreement at all between Thursday.

Q. Did you go down there when Thursday went to file on this land?

A. Yes, sir.

Q. Who else went with you?

A. Mr. Harned and Mr. Evans.

Q. Where did you board at Tahlequah?

A. National Hotel.

Q. Before you went to the National Hotel did you board, where?

A. We boarded there all the time we were there.

Q. Didn't you go around to Frank Wilson's, a private house?

A. I think a part of us took dinner, two days there.

Q. Who got it for you?

A. I don't know.

Q. It was secured for you before you got down there?

A. I don't know.

Q. That was all your business down there at that time, the members of the Delokee Oil Company was to secure this filing?

A. No sir, Mr. Harned had some other parties there to file.

Q. Did you?

A. No, sir.

Q. Did Evans?

A. He was interested with Mr. Harned.

Q. You didn't have anything else but this?

A. No, sir.

Q. Did Wallace stay at the same place where you people stayed?

A. Yes, sir.

Q. All the time you were there?

A. Yes, sir.

Q. You went down with him?

A. Yes, sir.

Q. You remained there until after he completed his filing?

A. Yes sir, and come back with him.

Q. You people paid his expenses?

A. Yes, sir.

Q. There and back?

A. Yes sir, and while he was there.

Q. You have only agreed; you say, to give him \$800.00 for an Oil Lease on this entire 320 acres?

A. That was all he asked, yes sir.

438 Q. Did you see Jesse Harnage when you were there at that time?

A. I don't remember that I did, I might have seen him.

Q. Don't you know that while you were there at that time arrangements were made with Jesse Harnage to file on this south 80 so he would give the lease to the Delokee Oil Company, so if

Wallace won you would get it and if he didn't, you would get it anyway?

A. No sir, I don't know.

Q. You were not present when such an agreement was made?

A. No, sir.

Q. You know of it.

A. I heard of it.

Q. And directly after that Jesse Harnage came out to look at this land with members of the Delokee Oil Company?

A. I wasn't along.

Q. You have been a member of the Delokee Oil Company since its beginning?

A. Yes, sir.

Q. And a member of it now?

A. Yes, sir.

Q. Did you have some talk with Wallace about the sale of this north 80 to Ella E. Heady?

A. Yes sir, I talked to him a number of times.

Q. I mean before you went down there?

A. Yes sir, I talked to him about it.

Q. And you had heard of it before you went down there?

A. Yes sir, I had heard all about it I suppose.

By Mr. Veasey:

Q. Mr. Gray why did the Delokee Gas and Oil Company employ an attorney to defend the contest of Bob vs. Heady?

A. From the fact that they had a contract for a lease on the land.

Q. Well what good would this employment of an attorney do in that case?

A. Well we couldn't very well fight the case without an attorney.

Q. What was the purpose of your filing the case, what did you expect to gain by it?

A. We expected to gain the lease.

Witness excused.

ELMER G. HOULTEN, being first duly sworn by the Commissioner Bixby, testified as follows on behalf of Contestee:

By Mr. Veasey:

Q. What is your name?

A. Elmer G. Houlten.

Q. What is your age?

A. 45.

Q. Where do you live?

A. Oklahoma City.

Q. Were you living at Oklahoma City on or about the 4th or 5th day of March, this year?

A. I was.

Q. Do you recollect the circumstance of an oil lease being taken there from Sam Bob, a Delaware citizen, by the Delokee Gas and Oil Company?

A. I do.

Q. You may state the circumstances of the taking of that lease so far as you know, when and where and what was said at that time?

A. Why I run the Delimonico Restaurant and Mr. Bob and Mr. Harned were stopping there and they asked me if I was too busy to find a Notary for them and I told them I would get Mr. Palmer, City Clerk in the City Building and I took the Attorney and Mr. Harned down there and they wanted two witnesses and I got my brother and myself and the lease was read to Mr. Bob, that is the Indian.

Q. What time of the day was this?

A. It was in the morning about 8 or 9 o'clock. It was a little after 8, between 8 and 9.

439 Q. Was the lease explained?

A. It was read word by word very slow to Mr. Bob.

Q. Was it also explained to him?

A. Yes sir.

Q. Do you recollect any mention of a house to be built on the land being part of the lease?

Mr. George: We object to that and ask that he be required to state the conversation had there.

A. Mr. Bob told me before he signed the lease that he was to have a house built.

Q. How long before this 4th day of March had Bob and Harned been stopping at your place?

A. I can't just remember, they have been stopping there off and on.

Q. About how long, permanently?

A. Two or three weeks likely, maybe longer, off and on.

Q. Did you observe any improper influence being brought on him at that time?

A. Not as I know of.

By Mr. Bixby:

Q. You say that as far as your knowledge is concerned?

A. No sir, I wasn't with them all the time.

Q. You were present with them only part of the time?

A. Yes sir.

By Mr. Veasey:

Q. Do you recollect that I was the attorney that took that lease?

A. Yes sir.

Q. How long did it take us to go through that transaction that morning, do you recollect?

A. About an hour and a quarter or a half.

A. Who was in the room at that time?

A. Mr. Harned, the City Clerk, Mr. Palmer, my brother, H. B. Houlten, yourself, Bob and myself.

By Mr. Hastings:

Q. How long have you been in Oklahoma City?

A. Since the opening.

Q. You had been running restaurant that long?

A. Off and on.

Q. You run a rooming house in connection with the restaurant?

A. Yes sir.

Q. How long had Sam Bob and these people been there?

A. I don't know, they had been there several times.

Q. They took meals down in the restaurant?

A. Yes sir.

Q. Had they been there for some considerable length of time?

A. They stopped off and on.

Q. Immediately before this lease was taken, how long had they been there then?

A. I don't think they had been there over two days.

Q. They had been there prior to that time?

A. Stopped there off and on.

Q. About how many times do you think you observed them?

A. I couldn't tell unless I looked at my books, 3 or 4 weeks.

Q. Who paid the bills?

A. Bob paid his and Harned paid his.

Q. Sam Bob paid for everything he ate and for his room and the other fellow paid for his?

A. They might once in a while one man paid it, but most always separate.

Q. Have you any independent recollection about it?

A. I collected the cash there.

440 Q. Why do you remember about these two particularly, about these two?

A. I don't remember particular I know just from myself taking the cash.

Q. Were these leases prepared when you witnessed them, when they came up there to be signed, and wanted you to get an officer before whom the acknowledgment was taken?

A. They were all prepared for signature. I didn't see them prepared.

Q. And then all that was to be done there in your presence and in the presence of the other witnesses and the acknowledging officer was their signature and being attested?

A. They were read and then signed.

Q. They were already prepared?

A. Yes sir.

Q. That had evidently been done before they come there?

A. I don't know.

Q. You know they were prepared on printed forms?

A. Yes sir, they were prepared.

Q. On printed forms or not?

A. I don't know whether they were prepared on printed forms.

Q. Were the leases printed leases, or written out in long hand or on a typewriter?

A. I think they were typewritten.

Q. Is that your recollection about it?

A. I don't exactly remember.

Q. How many did you sign,—one?

A. No sir, I believe I signed 3 or 4.

Q. Do you know how many you signed?

A. 3 or 4 I think, there was 4.

Q. You think they were all typewritten?

A. I am not sure about being typewritten.

Q. You don't remember any of the contents of them do you?

A. It is pretty long, I couldn't say.

Q. You don't remember any of the considerations, was there a house consideration in that lease?

A. The fact of it is he was reading this lease to Bob and of course I was there to witness the lease, but to recall anything in the lease would be a pretty hard matter for me to do.

Q. Then it was so explained in your presence that you didn't retain any of it in your memory?

A. I was present and a witness to the lease but I don't remember anything that was in it.

Q. Was anything said about there being a house in there as a part of the consideration for this lease?

A. I don't know whether it was Bob or not or in the lease, but I was told there was a house to be put up.

Q. You don't know what conversation they had before they come into your place?

A. No sir.

Q. They may or may not so far as you know.

A. That is right.

Q. Have you ever known Harned before you saw him in company with Sam Bob?

A. I have known him for years.

Q. Where did you meet him first?

A. Arkansas City, Kansas.

Q. Did you use to live there?

A. Yes sir.

Q. You had known him then in Arkansas City for a number of years?

A. I had run a restaurant there and had known him for years.

Q. He used to live there?

A. Yes sir, run a Grocery store.

Q. You are not related to him?

A. No sir.

Q. You know what Oil Company Mr. Harned represented to whom this lease was given by Bob?

A. I don't remember what Company it was.

Q. How long have you been running this rooming house?

A. This is the fifth year, lacking a few months.

Q. About how many rooms have you in your rooming house?

A. I only have 72.

441 Q. Both men and women occupy these rooms?

A. No women, I don't allow a woman up stairs.

Q. No woman allowed in the building?

A. No woman up stairs. I have an aged lady, 70 years old, that takes care of the rooms.

By Mr. Veasey:

Q. Do you hold any official position in Oklahoma City?

A. Yes sir.

Q. What is that?

A. Fourth Ward Alderman.

By Mr. Rodgers:

Q. Did you have any talk with Mr. Harned about this lease before the morning when he asked you to find the Notary?

A. I don't know, I believe Mr. Harned asked me if I could be used as a witness, and asked me to get another man and I told him my brother was there that he run a clothing store.

Q. Did Mr. Harned ever tell you why he had that Indian over there before that time?

A. No sir.

Q. Didn't it seem like a queer circumstance to you that he was traveling with this Indian and came there several times?

A. No sir, it didn't. I understood the Indian was rich. And as he spent his money pretty freely I was willing to put up with him and I didn't ask no question, I was after the money.

Q. You never had any idea about the lease question at all that morning?

A. No sir. I treated him like a Prince.

Q. Did you ever see this Sam Bob under the influence of liquor?

A. I never did.

Q. Did you ever see him when you thought he was or had been drinking?

A. No sir.

Q. Never saw him take a drink?

A. No sir.

Q. Did you ever see Sam Bob with any woman in Oklahoma City?

A. I never did.

Q. You don't know of him ever visiting any woman there?

A. No sir. He told me he had a girl down at this place he was about to go, and that he was about to get married to her but that she was pretty young.

By Mr. Hastings:

Q. Did he say what her name was?

A. He didn't say.

Q. Did he show you her picture in his watch?

A. I don't know, I don't think he did. He told me he had to get a bigger stomach on him before he settled down. He said all Indians wanted a big belly.

Witness excused.

Mr. Bixby: It now being 5:45 P. M. we will take an adjournment until 7:30 P. M.

In pursuance of adjournment above noted, the hour of 7:30 P. M. having arrived, a further hearing of thi scase was had as follows:

442 L. A. ROWLAND, being first duly sworn, by Commissioner Bixby, testified as follows on behalf of Contestee:

By Mr. Veasey:

Q. Just make your statement?

A. My name is L. A. Rowland, I am an Attorney at Law practicing at Bartlesville, and I am a member of the firm of Veasey & Rowland. I never had any active connection with the pending case until some time last summer, about the middle of July. This was after the case had been heard at Muskogee the second time, and I went to Muskogee for the purpose of investigating the condition of the matter and ascertained that Samuel Bob had filed a waiver relinquishing his rights in the entire 80 acre tract of land which he had been seeking to have allotted to him. Our firm were Attorneys of Record for Samuel Bob and on his behalf I filed a motion for a time within which to investigate the conditions under which the waiver Bob had signed was obtained. The following day, which I believe was the 18th or 19th day of July, I was served with a notice that Sam Bob had disposed of our services as Attorneys, and that A. H. Norwood had been substituted. This notice was served by Mr. Norwood in person. I accepted service of it stating, however, that I didn't recognize it because I believed it had been obtained by fraudulent representation and by improper and undue influences. On the 18th or 19th day of July this paper was presented to the Contest Division of the Commission and there a short investigation was had, Sam Bob and Wallace Thursday both testifying. While in Muskogee on this trip I used every effort possible to have a conversation with Sam Bob so that I might apprise him of his right under the decision that the Commissioner had made, and of what we thought we was really entitled. I was thwarted in these efforts by parties who seemed bent upon preventing my having any conversation with him. I talked with Wallace Thursday also regarding the matter, but only for a short time and with considerable interruption. Returning to Bartlesville we were unable to get in touch with Sam Bob for about one month. Upon his return to Bartlesville we were notified that he was here by some members of the Delokee Oil Company who had seen him or learned of his presence here, and I ascertained that an effort would be made to have a conversation with him so that we might even at that time apprise him of his rights. I advised the members of the Delokee Oil Company that if he could be induced to sign a paper reinstating us as his Attorneys and recalling the papers that he had filed at the Commission, it would be desirable both for the Company's best interest and for the best interest of Sam Bob. I believe it was about the 22nd of August that such papers were prepared and on the morning I think of the 22nd, at perhaps about four o'clock in the morning these papers were signed in the office of the Delokee Oil Company in Bartlesville. I was present when the papers were

signed, having been called in for that purpose. The papers were in our office and I took them into the Delokee office and explained them to Sam as thoroughly as I could and he voluntarily signed these papers. They were afterwards filed at Washington and perhaps in Muskogee, I am not certain. Now I want to state, in view of the fact that a certain letter purporting to have been written by Wallace Thursday was written and it was sent to Mr. Kelsey and also to the Commissioner of Indian Affairs and to the Secretary of the Interior, charging that members of the Delokee Oil Company and their representatives, Veasey & Rowland, had induced Sam Bob to sign this paper by causing him to become intoxicated, that was the effect of the letter, I wish to state that that statement is absolutely false, unqualifiedly false. So far as I have any information, and I have information to this extent, that I was present when he signed the paper and talked with him perhaps ten or fifteen minutes prior to that, and I know that he was in the possession of all his faculties, and that he understood what he was doing. This letter sent to the Secretary of the Interior was not called to my attention for some days afterwards, perhaps a week or ten days. Naturally such charges as were made against the Delokee people and Mr. Veasey and myself were not to be passed lightly. I went to see Wallace regarding these charges and he voluntarily came to Bartlesville and repudiated the entire transaction with the exception to say that he had heard that Sam had been influenced by drinking intoxicating liquor. That was the entire statement so far as he intended to make it to the Secretary of the Interior. He stated that Charlie Julian had prepared this letter, and that Charlie Julian had not written the letter that he intended for him to write, and in view of those charges made against us, I wish to say now that the implication in that letter *are* unqualifiedly false and couldn't have been engendered by anything else than a malicious desire to state a falsehood.

Q. Did Sam Bob make any statement at the time he signed this reinstatement of Veasey & Rowland?

A. Well maybe not.

Q. Respecting a voluntary manner?

A. Well it was voluntarily. The only question that was raised in his mind was whether or not the representatives of the Test Oil Company would give him trouble. He said he had been warned not to do that by them. I assured him the papers he was signing was for his own interest, for the benefit of holding that north 80 and it was with that consideration in view that he signed the paper.

Q. Do you know anything personally about this dancing platform in this letter?

A. No sir.

Q. About the whiskey from Caney, Kansas?

A. No sir, nothing in the world.

By Mr. Huckleberry:

Q. What day did you arrive in Muskogee in July?

A. It occurs to me that it was Wednesday, it was at least the morning after the appearance of Sam before the Commission.

Q. Who came with you of the Delokee Oil Company?

A. I think I came alone.

Q. What other member of the Delokee Oil Company were there?

A. I don't think any of them were there that day.

Q. What day did they arrive?

A. I think it was the following morning.

Q. Give the names of those that arrived the next morning?

A. Well Mr. Boswell of Coffeyville and Mr. Harned of Coffeyville.

Q. Who else?

A. I am not sure whether Mr. Coombs was present or not, I don't remember.

Q. You went to Muskogee to find out what Sam Bob was doing there?

A. I had some other business at the Agency to attend to at the same time and had intended to go to Muskogee at that same time for some other purpose, but learning through Mr. Gray, I
444 believe, that Wallace had gone down there I made inquiry at the Commission to ascertain just what had been done, if anything.

Q. Made inquiry after you reached there?

A. Yes sir, I knew nothing whatever at that time of the decision in the case or of the action that had been taken by Sam Bob, although we were his Attorneys of Record.

Q. You knew nothing of Sam Bob being before the Commission then until you reached Muskogee?

A. I did not.

Q. Well when you reached Muskogee you learned that he had filed a confession of judgment in person?

A. Yes sir, and also a subsequent relinquishment.

Q. Of his right to apply?

A. Yes sir.

Q. You were there the day he did this or the day following?

A. The day following. I think both the confession of judgment and relinquishment were filed the same day but at different times.

Q. Then you filed a protest to that?

A. Yes sir.

Q. A sworn protest which is in the papers here, that from information and belief you thought that Sam Bob had made this confession of judgment and relinquishment,—you had not at the time you filed this protest you hadn't consulted either Sam Bob or Wallace Thursday?

A. No sir.

Q. At the time you filed this protest you hadn't seen any members of the Delokee Oil Company since you had left?

A. No sir.

Q. I will ask you then on what information you had at that time, at the time you filed that affidavit which led you to swear that

you had information that from undue influence or anything of that kind had been used to secure that?

A. Simply this, and the records will show this,—

Q. Just answer please, never mind arguing?

A. Sam had gone to the Commission and had relinquished 40 acres of the north 80 rather than pay the sum of \$1,530, which to my mind was so unreasonable an act and so unwarranted that I hadn't the slightest doubt that somebody had taken charge of him.

Q. Any other information you had which caused the making of that affidavit upon which you based that affidavit?

A. Well there was this other feature of the case,—

Q. Information I am talking about?

A. It is only the facts as I found them that is all I am going to state. We were the Attorneys of record in this case and the fact that A. H. Norwood had inserted himself into the good graces of Sam Bob and hadn't consulted us, his present Attorneys of record, and had presented this matter so much to the detriment of Sam Bob I thought that A. H. Norwood must have done so by fraud.

Q. You had no other information?

A. Excepting the records.

Q. In other words when you filed that affidavit you knew nothing, except what the records showed at that time, and had no other information?

A. No I don't think I had any other information. I ascertained a good deal the following day.

Q. I am asking about that time?

A. Yes sir.

Q. Did you talk with Wallace, that was Thursday the 19th?

A. I believe it was Thursday we had the hearing, I don't remember the day.

Q. During that day upon which you filed this protest of yours did you talk with Wallace Thursday?

A. I don't remember whether I saw him that day or the following day. I endeavored to see him just as soon as possible.

445 Q. Didn't you see him and have a talk with him?

A. I say I can't say whether it was that day or the following day.

Q. Nobody was present to your knowledge?

A. For perhaps one or two minutes. I had a conversation with Wallace but I was interrupted.

Q. By whom?

A. A negro came up and interfered, simply began talking to Wallace and said come on let's go away, and Cy Johnson was there. I was at the same time trying to have a conversation with Sam. Cy Johnson and this negro prevented by having a conversation sufficient to make a satisfactory statement of the matter.

Q. Didn't you have a conversation with Wallace in which you asked him to come up to your room?

A. Yes sir, I did.

Q. Mr. Rowland your employment you knew came through and from the Delokee Oil Company?

A. Yes sir.

Q. You knew that Sam Bob and Wallace Thursday paid your firm not one cent for services?

A. Certainly.

Q. You knew that your firm as attorneys had no claim for services or anything against Sam Bob and Wallace Thursday?

A. I have just stated that.

Q. Then why were you so particular interesting yourself in this matter after a notice had been served on you that your services or the services of your firm was no longer needed?

A. First place that notice wasn't served on us until after I had filed this protest, and the second place I have always been deeply interested in seeing this allotment go to Sam Bob, and the third place I have been deeply interested in protecting the interest of the Delokee Oil Company, which has a lease on the allotment and whose interest is identical with Sam Bob.

Q. In your judgment?

A. Is not it in your judgment?

Q. No sir?

A. Perhaps your judgment is prejudiced.

Q. Well on the night now of that day the Delokee crowd arrived in town?

A. No sir, the following morning.

Q. And then there was a hearing?

A. Yes sir.

Q. You were served with notice and you came down before the Contest Department of the Commission and there Sam Bob, in your presence, filed this paper dismissing you as his attorney?

A. Yes sir.

Q. And you forthwith subjected him to a severe examination?

A. I don't know how severe, I cross examined him.

Q. And he persisted that he didn't want your firm?

A. Yes sir, he stated that.

Q. And then Wallace Thursday went on the stand and substantiated that, didn't he?

A. He testified.

Q. To that in substance upon your cross examination?

A. You mean he substantiated Bob's dismissal of us?

Q. Yes?

A. I don't know as he substantiated it. He testified.

Q. Testified and you cross examined him?

A. Yes sir.

Q. Somewhat at length?

A. Perhaps, yes.

Q. Well were not you satisfied from the sworn testimony of Sam Bob that he didn't really want the services of Veasey & Rowland?

A. That he didn't at that time want our services any more.

Q. Now when did you prepare this paper in which you were re-stated as Attorneys for Sam Bob?

A. About one month after that time.

Q. How long before it was actually signed?

A. I don't know whether it was the day or two days before, I am not sure.

Q. Up until that time you hadn't had any talk with Sam Bob?

A. No sir.

Q. The paper was prepared with the idea some one would bring him up and have you reinstated?

A. That was the purpose.

446 Q. Why were you so interested in Sam Bob?

A. Because we felt A. H. Norwood's representation was actually against his interest, and because we owed it to Sam at that time to protect his interest and also to protect the interest of the Delokee Oil Company.

Q. Isn't it a fact you were protecting the interest of the Delokee Oil Company, your employers?

A. We were trying to do so.

Q. Do you mean to tell the Commissioner that after you had been so summarily dismissed by Sam Bob and Wallace Thursday that out of kindness of feeling you prepared this paper hoping he would have a feeling toward you and come up and employ you again?

A. I don't think I said kindness of heart or manner, but I do state that the preparation of that paper, the representations I made to him that night were all made in absolutely good faith, for the purpose of protecting Sam Bob's rights and at the same time the Delokee Oil Company's rights.

Q. What reason did you have to believe that the Agents of the Delokee Oil Company would bring Sam Bob to you and get him to employ you?

A. I knew they were making an effort to have a conversation with Sam and explain to him just where he stood and anticipating a successful result of those conversation I prepared the papers.

Q. Which agents, if you know, were making that effort?

A. I don't know that I can state which one of them did the talking with Sam Bob. I know several of them were with him at the same time.

Q. And as you stated a while ago you had advised and encouraged them in such efforts?

A. Certainly.

Q. That is somewhat a particular proposition, isn't it?

A. Very natural thing to do under the circumstances.

Q. Who was present in your office at four o'clock that morning, in the Delokee Oil Company's office when this paper was signed?

A. Sam Bob, Mr. Owsley, a man by the name of Slater, and I think was one of the attesting witnesses, Mr. Martin, I am not sure that Martin was there when it was signed but they were there during the time, they might have been out of the office just at the time it was signed.

Q. Who else?

A. Mr. Coombs.

Q. Who else?

A. Cy Johnson.

Q. Who else?

A. Mr. Harned. I don't know whether I have named them all or not.

Q. Do you usually open your office that early in the morning?

A. No sir, I don't.

Q. Any good reason given at that time why the summons of all these men to come down there to see whether you were employed as attorneys for Sam Bob?

A. The reason was this: I was awoken- at 3:30 and told that Sam Bob expected to leave on the early morning train, which leaves here at 4:45, some such time in the morning, and that he wished to sign these papers before leaving and accordingly I got up and dressed and come to the office and explained to Sam the contents of them.

Q. And told him the papers were all right so he could leave on that train?

A. They were all prepared.

Q. This Cy Johnson, what was he doing there in that Delokee crowd?

A. Well I don't know that, he was particular busy.

Q. Well Cy is this boy that was down to Muskogee that kept you from talking to Wallace?

A. Same person.

Q. He was that gambler that you were complaining about that had run off with Sam and Wallace?

447 A. I think so.

Q. What was he doing there with you then?

A. I saw he was present, he was simply in the crowd.

Q. What part—in other words was he filling in that transaction?

A. Cy Johnson was advising Sam just as we were advising him.

Q. In other words he at that time was in the employ of the Delokee Oil Company, wasn't he?

A. I am not prepared to say he was an employe of the Delokee Oil Company. I am prepared to say that Cy Johnson was urging Sam Bob to sign the paper and urging it on the ground that his rights would be protected in the signing of that paper.

Q. Have you any reason to believe that Cy Johnson was there and doing that because of the money of the Delokee Oil Company?

A. If you want me to state what I have on information I will state it.

Q. I want to know about Cy Johnson?

A. I will state that, this is on information and not what I know. Cy Johnson—

Q. I want you to understand you are a witness and not an attorney, and I want you to state as to your information why Cy Johnson was there?

A. Cy Johnson as you know, as was disclosed in the testimony at Muskogee,—I want to lead up to this proposition.

Q. Never mind that, I don't want you to make a speech in the record?

A. I don't want to make any speech, I want to get all the facts.

Q. I will withdraw the question if you want to make a speech. Cy Johnson to your personal knowledge was there acting on behalf and

for the Delokee Oil Company in having you reinstated as the attorney for Sam Bob?

A. Yes and also in having him withdraw the waiver of appeal, the whole matter that was signed.

Q. Now where did you understand they were going on that hurry up trip?

A. They told me they were going to Oklahoma City.

Q. Well wasn't it somewhat discussed in your presence it would be a good thing for Sam to take a trip?

A. I don't know, I imagine it was.

Q. Wasn't it a matter of fact that some days prior to this it was discussed?

A. For a whole month prior to this he had been away.

Q. For some days prior to this while you were advising them to secure your re-employment wasn't it likewise talked among you that after that was done it would be best for Sam to go away for awhile?

A. Yes sir, it might.

Q. You understood when they were leaving here they were going to Oklahoma City?

A. That was my information.

Q. And where from there?

A. I don't know.

Q. Did you receive any information later than that as to his whereabouts?

A. In a round-a-bout way I might have heard.

Q. Did you hear they had gone to Arkansas City?

A. Yes sir.

Q. And had gone to Colorado?

A. Yes sir.

Q. You knew who he was with?

A. I heard it, I don't absolutely know.

Q. That was the understanding among the members of the Delokee Oil Company and you?

A. I had heard that Bell Thompson was with him in Denver.

Q. Now there was a Habeas Corpus case at Vinita concerning the whereabouts of Sam Bob, you know that don't you?

A. I have information to that effect, yes sir.

Q. And you knew that Wallace Thursday and the officers were trying to locate Sam Bob?

A. I heard that a Habeas Corpus proceeding had been instituted at Vinita.

448 Q. Did you or Mr. Veasey give the information where Sam might be found in order to satisfy the inquiries of that Court or did you conceal that information?

A. I wasn't present there, Mr. Veasey was there.

Q. Did Mr. Veasey have the same knowledge as you did?

A. I don't know whether he did or not. I pre—

Q. You started to say you presumed he did?

A. I presume so, yes sir.

Q. Well now you were,—no it was Mr. Veasey I believe down at Muskogee the first of last month at the hearing?

A. What hearing do you speak of.

Q. The 18th?

A. We were both present on the 29th, but no- on the 25th.

Q. You knew where Sam came from that time?

A. Well yes, I knew he had been in Arkansas City but not where he had been.

Q. Didn't you advise them he had gone,—taken a trip to Arkansas City, at his hearing on the 29th?

A. I can't say that I remember, I certainly didn't advise him to come back to Bartlesville.

Q. Did you advise him to go back to Arkansas City?

A. I don't know. If I had given any advice it would have been he should be kept away from Bartlesville.

Q. Didn't you have Cy Johnson still?

A. No sir, I never have had Cy Johnson.

Q. The Delokee Oil Company was able to bring Sam Bob to Muskogee when they wanted him there on the 29th?

A. Yes sir.

Q. And able to bring him here today?

A. They or somebody else.

Q. And able to bring him here today?

A. Sam has testified.

Q. Well answer my question?

A. Well I am not going to state that the Delokee Oil Company has ever kept him any place that is on information. They never have kept him any place that I know of.

Q. Now I want to ask you in seriousness, do you believe that?

A. I most certainly do.

By Mr. Rodgers:

Q. Are you interested Mr. Rowland in any way in the Delokee Gas and Oil Company except as attorney?

A. No sir.

Q. Have you ever been?

A. No sir.

Q. Never have owned any shares of stock in that company?

A. No sir, I haven't.

Witness excused.

EDWARD C. D'YARMETT, being first duly sworn by Commissioner Bixby, testified as follows on behalf of the Contestee:

By Mr. Veasey:

Q. State your name?

A. Edward C. D'Yarmett.

Q. How old are you?

A. 32.

Q. Where do you live?

A. Bartlesville.

Q. What is your profession?

A. Engineer.

Q. Have you at any time recently made a plat showing the SE4 of the NW4 and the SW4 of the NE4 of Section 13, Township 26 North, Range 12 East of the Cherokee Nation, Indian Territory?

A. Made one last night.

449 Q. Will you examine that which I hand you and indicate to the Commissioner whether or not this is the plat you prepared?

A. That is the one I prepared last night.

Q. Are you familiar with the tract of land immediately south of the land described on the plat?

A. I surveyed it twice.

Q. Does this plat refer to that south 80?

A. The south 80 is inclosed in red lines.

Q. Does this plat also show what is commonly known as the McDaniel addition to the City of Bartlesville?

A. It does.

Q. How far is the McDaniel addition of the City of Bartlesville from the land described in this plat?

A. It joins it on the south.

Q. What does this yellow color indicate on the land specifically described at the bottom of your plat and the 80 acre tract south of it?

A. That is the land I would pick out for good building cites.

Q. Did you examine that land with that in view?

A. I did.

Q. What was the character of the land with reference to its elevation, etc.

A. It was high and comparatively level; no breaks in the formation, smooth ground.

Q. Does your plat indicate the proportion respectively of land of that character on the two 80's?

A. It does.

Q. How much land is high and available for townsite purposes in the north 80, the one immediately south of the McDaniel addition?

A. I picked out 55 acres, it is all available except where the wells are and the draws come through there.

Q. How is the land immediately west of the railroad is that as suitable as the other?

A. Not near so.

Q. What proportion of the land of the south 80 is high and desirable as a townsite addition?

A. In my judgment there are 40 acres of it good.

Q. Does the draw widen or narrows as it extends southward?

A. It widens all through there.

Q. Does your plat indicate the location of the oil wells in the immediate vicinity of these two tracts?

A. It does.

Q. How was that location determined?

A. By actual survey.

Q. And your plat here indicates the number of wells that are near the two tracts?

A. It does the wells near the boundaries of the land.

Q. Have you any personal knowledge of the capacity of these wells?

A. No sir, only in a general way. I am not able to give any testimony as to the capacity of any well there.

Q. What is the elevation of the 80 just south of the McDaniel 80 as compared with the McDaniel 80?

A. About on a level.

Q. Is there a depreciation of the 80 still south of the land, still south of the land described on your plat?

A. No sir, it follows just about the same. Same as to this 80 which I have inclosed in red.

Q. Does your plat show the location of all the oil wells in the immediate vicinity of these two tracts?

A. They show the location of all the wells immediately adjacent to the lines. I merely estimated the distance of the wells if there was one well in between. But the wells close to the line I measured to them.

Q. Then what distance does it indicate, all the wells near the boundaries of these two tracts?

A. Merely those that the measurements were given have been actually located.

Q. Those where you actually made measurements, if there had been any wells in addition to those between them and the boundaries of this land you would have indicated it?

A. I would have indicated it.

450 Mr. Veasey: We desire to introduce this plat in evidence, and have it marked "Contestee's Exhibit D."

Mr. Bixby: The plat will be filed.

By Mr. Huckleberry:

Q. What is the character of this draw you have marked?

A. It is a depression.

Q. Just a slight depression is it not that could easily be filled?

A. On the north 80 it would take very little filling; on the south 80 it would take considerable filling. There is a difference of about 30 feet between the level of that and the two sides. On the north where the draw starts there is a depression of about 8 feet.

Q. That is to the bottom of the ditch?

A. Yes sir.

Q. And what is it where it goes through here (indicating)?

A. I am not able to tell.

Q. It is just a natural ditch or draw?

A. Yes sir.

Q. It is kind of a draw, or little branch?

A. Yes sir, a little branch. There is a spring along on the south 80 and a little water flows from that and that makes the draw deeper.

Q. You haven't taken in all of the oil wells that appear on the Mary Thursday tract have you?

A. No sir, merely the wells on the line.

Q. You have dotted here for instance a well down here a well (indicating) as a matter of fact there is quite a bunch of wells there?

A. I believe there are some wells on the south of the 80.

Q. Is there any wells on the 40 acre tract immediately southeast of the southeast corner of the south 80 that you have not shown on your plat?

A. I believe there are quite a number.

Q. Fifteen or twenty wells in there?

A. I couldn't say.

Q. Is not there probably, say 6 to 10 wells more on the Mary Thursday tract than you have shown in your plat,—south of the south 80?

A. There may be some on the south part of that but I didn't locate them.

Q. Is there any more wells on the west of the south 80 that you have not located?

A. Not very close to the line.

Q. What do you mean by very close?

A. Well within five or six hundred feet.

Q. You are not able to say closer than that?

A. We located here 150 feet of the line.

By Mr. Rodgers:

Q. You put all that land west of the railroad in the undesirable class for building purposes?

A. It is undesirable from a draw that goes through it, and the railroad cuts it off from the main part of the town, and couldn't be as valuable as the land east of the tract.

Q. Largely occasioned by the railroad running through there?

A. Largely, yes sir.

Q. How about the land that lies directly west of the railroad, between the railroad and the draw, is that on a level?

A. No, it drops off right from the railroad west to that draw, although it could be used for townsite purposes.

Q. The depression occasioned by that draw starts right from the railroad?

A. I mean that the hill slopes from the railroad west.

451 Q. Very much of a slope?

A. Yes sir, there is a drop there of at least 30 feet.

Q. From the railroad to the bottom of the draw?

A. Yes sir.

Q. Is it just a gradual slope?

A. Just a gradual slope. The ground is smooth, not broken by washes or anything of that kind.

By Mr. Huckleberry:

Q. As a matter of fact all that land is practically level except where those two branches go through?

A. I wouldn't say it was practically level.

Q. It would not be called rough or broken land?

A. It isn't rough or broken land except that the draw is in there, and would not be desirable, could put up stores over there.

Q. For factory cities it isn't bad?

A. I am not testifying about factory cities.

By Mr. Veasey:

Q. On your cross-examination you referred to a group of wells being on the Thursday allotment and near the line on the south 80, which 80 do you mean?

A. Near south line of the Mary Thursday they are near the south line or else I would have observed them as I went by.

Q. Your plat indicates all the wells within 500 feet of the boundaries of the land, does it not?

A. Yes sir.

By Mr. Huckleberry:

Q. Do you mean to say positively that there are no wells in that 80 acres shown on your place belonging to Mary Thursday except as shown on your plat?

A. No sir, I mean to say there is none there nearer than 500 feet of the line.

Q. You don't mean to say all the wells on that southeast 40 are shown on your plat?

A. No sir, not all of them.

Q. Not one-third of them?

A. Yes sir, I believe there are more than one-third.

By Mr. Veasey:

Q. Have you indicated all the wells within 500 feet of the south-east corner of the two tracts?

A. Yes sir.

Witness excused.

FRANK BOOKER, being first duly sworn by Commissioner Bixby, testified as follows on behalf of the Contestee:

By Mr. Veasey:

Q. State your full name?

A. Frank Booker.

Q. How old are you?

A. 50.

Q. Where do you live?

A. Bartlesville.

Q. What is your business?

A. I am in the banking business.

Q. Are you familiar with the tract of land near the town of Bartlesville commonly known as the McDaniel addition?

A. Yes sir.

Q. Do you know anything about the ownership of that tract?

A. Yes sir.

Q. Who owns it?

A. It belongs to the Bartlesville Improvement Company.

452 Q. Are you connected with that Company?

A. Yes sir.

Q. In what capacity?

A. I am a stockholder and Treasurer of that Company.

Q. Has any portion of that tract been platted for townsite purposes?

A. Yes sir, nearly 50 acres.

Q. Do you recall in a general way the aggregate list price of the lots in that plat?

A. Yes sir, I have them listed at about \$80,000.

Q. What proportion of the lots have been sold?

A. There has not been quite half the lots sold, the most valuable lots were sold first. We have sold about \$40,000.

Q. You have sold one-half of the lots?

A. No sir, we sold the most valuable first.

Q. Are the lots now selling at this price?

A. Yes sir.

Q. Thirty acres of the McDaniel eighty has not been platted at all?

A. No sir.

Q. Here is a plat of the McDaniel addition Mr. Booker that has been identified by the man who made it, indicating such part as has been set aside for townsite purposes, also black dots indicating oil wells, I will ask you if it is a correct representation of the oil wells that have been drilled on the land of the Bartlesville Improvement Company?

A. I think so.

Q. How many wells have you drilled along the south side of that tract?

A. Five.

Q. Beginning from the west side going east state to the Commissioner the exact capacity of those wells?

A. I couldn't state the exact capacity, but this well,—well No. 3, it produced about 250 barrels. This well down here (first one against the railroad) it was a good well, about 100 barrels, and the next one going east was probably nearly 200 barrels, and the third well going east, it was a 250 barrel well, and I think probably the best well of any of them. The fourth well made about 25 barrels and the fifth about the same I should judge.

Q. Which of those five was the first one drilled?

A. The middle well.

Q. The third going east from the railroad track?

A. Yes sir.

Q. About when was that drilled in, approximately?

A. I should judge about two years ago.

Q. Then which was the next well drilled in?

A. The fourth going east.

Q. When was that drilled in?

A. Well possibly two months later.

Q. And the next well?

A. The next one was the fifth from the railroad.

Q. About when?

A. A couple or three months later than the first.

Q. Then which well was drilled next?

A. Then the second one from the railroad?

Q. About how long ago?

A. Well that wasn't much over a year ago.

Q. Then the well directly against the railroad?

A. That was drilled next, probably a month or two later.

Q. What was the aggregate capacity of those wells now?

A. Well our lease man says they will make about 200 to 225 barrels now. Of course we don't get all the oil,—he says they will make 225 barrels.

Q. Are you familiar with the oil mining production near the lines of the 80 acre tract south of that land,—that is in contest between Sam Bob and Ella E. Heady?

A. Not exactly, I know more of these wells on the Renfro land.

453 Q. What is the character of those wells?

A. I understand they are all good wells.

Q. In regard to the wells south and west of the 80 acre tract south of the Sam Bob 80, are you familiar with the capacity of those wells?

A. Only what I have heard, I always understood they were light wells, but I don't claim to know anything about them at all.

Q. How long have you been engaged in the oil business?

A. I can not say that I have been in the oil business.

Q. You have been engaged in buying oil property to a certain extent?

A. Yes sir.

Q. For what length of time?

A. Ever since we have had oil here.

Q. You have had interest in production other than this?

A. Yes sir.

Q. In view of your experience and the development of those two tracts, what is the relative value of those two tracts, the north 80 and the south 80,—the Sam Bob 80 and the 80 south of that, at this time?

A. I don't know about this development in the southeast corner of the south 80, I don't know much about what those wells are doing, and I would not be able to say what the relative value at the present time is. Before those wells were drilled I would say the other looked much the best.

Q. You don't refer to the wells on the Thursday tract as being drilled recently?

A. I don't know, I don't just know where they are located, but they must be near the southeast corner of the south 80.

Q. And you don't know the capacity of those wells?

A. No sir.

Q. Do you know in a general way the lay of the land in the two 80's which we were talking about?

A. Yes sir.

Q. Which, in the light of your knowledge of the same, is the more desirable for townsite purposes?

A. The north 80 is very — more desirable, first laying better and being closer to town.

Q. Could you say what relative value it has as compared to the 80 south of it?

A. I would say it was worth two or three times as much for townsite purposes. There are more level ground and being nearer to town.

Q. Have you any special knowledge of how lots in the McDaniel Addition are selling at the present time?

A. Yes sir.

Q. How are some of those fifty-foot lots selling?

A. Five hundred dollars apiece, and from that down to two hundred dollars on the extreme south side.

Q. At the present time, how are they selling since they have been sold by you?

A. I know lots have since sold for considerable more than what the parties paid for them.

Q. Is a tendency forward rather than otherwise?

A. Yes sir.

By Mr. Huckelberry:

Q. Now, I notice from looking at this map, that you drilled these oil wells within seventy, eighty and eighty-one feet of the line of this north eighty, can you tell me why you drilled so close?

A. I don't know, there wasn't very much difference; we tried to get them on a straight line as near as we could.

Q. And as near the north line of that eighty as you could?

A. That is what they all did.

Q. Why did you do that?

A. I suppose the idea was to get as much of the other fellow's oil as we could.

Q. The three best wells have been drilled nearly two years?

A. Yes sir, I think so.

454 Q. How many thousand barrels of oil have you taken out of those five wells?

A. That is pretty hard to tell without looking over the books.

Q. You ran them as full a capacity as you could?

A. Yes sir, as full as they would take.

Q. And you have had the advantage of about two years drilling along close to that line?

A. Well, the oldest well is only about two years old.

Q. The oldest well is about two last spring?

A. No sir; I think it was brought in along the latter part of the summer, to my recollection, I would not be positive about that.

Q. Now,——?

A. The first well we drilled was a gas well.

Q. Then you went back down to the line to get the oil?

A. Yes.

Q. And you have gotten a good deal of it?

A. Yes sir, we have gotten considerable oil.

Q. Now, I notice that the McDaniel Addition is not laid out except along the north half of the McDaniel eighty and a little at the south east corner?

A. Well, in drilling as we went east the wells got lighter, and we figured there was no oil there, and so we laid it out for town lots.

Q. And the reason that you platted the north half and the east side of the McDaniel lot is because you didn't think it was valuable for oil purposes?

A. Yes sir, and more valuable for townsite purposes.

Q. Where the oil wells are you didn't plat that part of the eighty?

A. No sir.

Q. As a matter of fact, the lots which you have sold for such high prices are down here at the north edge of the McDaniel eighty adjoining the old townsite?

A. Yes sir.

Q. And practically all the lots you have sold lay in that portion of the eighty?

A. No sir, we have sold a few down here, and some down in the third layer.

Q. They are cheaper down there?

A. Yes sir.

Q. How many lots were platted in the McDaniel addition?

A. My recollection about 110.

Q. How many of them have you sold?

A. I don't know, but we have sold about \$40,000.00 worth.

Q. Well, how many lots?

A. I don't know, I figured up what we have realized out of the sale of the lots.

Q. Now, with each of these lots that you have sold you have entered an agreement that you would not drill a well upon them?

A. Yes sir, and that they should not do so.

Q. Why do you do that?

A. Because we wanted to protect the people against drilling in that part of the town.

Q. In other words, the drilling for oil, etc., don't mix up very well with residence property, does it?

A. No sir, it does not.

Q. And you drilled your land out,—you tested it before you platted it?

A. Yes sir.

Q. And if you have,—had found oil over it you wouldn't have had the McDaniel addition out there?

A. Probably not.

Q. Now, as a matter of fact, you have sold about \$88,000.00 worth of oil from those five wells?

A. I don't know without looking the books over.

Q. You have some idea, haven't you Mr. Booker?

A. It would be only a guess at it.

Q. Now I want to ask you if it isn't a fact that you are interested in this contest in this way that it is to your advantage to keep this eighty in contest, referring to the north eighty, as long as possible so your wells will have the advantage of draining that without offsetting wells?

A. That is not a fact. I want to see the parties get the land that it belongs to.

455 Q. Isn't it a fact that it is materially to your advantage?

A. That is probably true, but I would not be influenced in the least by any such cause.

Q. I am *not* asking you if it isn't a fact that you are actually the gainer every day this land is kept in contest?

A. There is no doubt about that.

Q. When did you lay this addition off?

A. I don't remmeber the date, but I think it was something over a year ago.

Q. As a matter of fact, the actual number of lots sold by you haven't exceeded one-third of the total number?

A. No sir.

Q. At the same time, hasn't there been added a large addition to the east of the town marked as the Armstrong Addition of 70 acres?

A. Yes, sir.

Q. And isn't it a fact that not over one-third of that addition has been sold?

A. I don't know a thing about that.

Q. And the Guthrie Addition was added to the town about this same time?

A. Yes, sir.

Q. And quite a number of those lots have not been sold?

A. I think so.

Q. And on the west side the Pemberton Addition and the Over-lease Addition has been added?

A. Yes, sir.

Q. And the McCaleb Addition, too?

A. Yes, sir.

Q. And not many of these lots have been sold?

A. No sir.

Q. Isn't it a fact that it has been saved for oil leases?

A. Yes, sir.

Q. There is also a Keeler Addition?

A. I think he is laying out an addition.

Q. Do you know how many houses there probably are on the McDaniel addition?

A. I could guess at it.

Q. What would you guess?

A. About twenty or twenty-five.

Q. As a matter of fact there is just twenty-one on it?

A. There might be.

Q. Have you any idea how many houses on the Guthrie addition?

A. As many or more.

Q. And on the Armstrong addition?

A. I would not say.

Q. In other words, there *are* plenty of land in addition to the town of Bartlesville to contain the future growth of the town for sometime?

A. Yes, sir.

Examination.

By Mr. Veasey:

Q. What is the character of the houses built on the McDaniel Addition?

A. The best houses in town are built there.

Q. How are the houses built there compared with the houses in the rest of the town?

A. They are better there than any part of the town.

Examination.

By Mr. Huckelberry:

Q. You mean that the houses there are as good as any in other parts of the town, and not that it has been built up like the rest of the town?

A. No sir. But the houses are as good as any in town.

(Witness excused.)

456 EDWARD C. D'YARMETT, recalled:

By Mr. Veasey:

Q. I notice an abandoned well indicated on the 40 acre tract immediately south of the south eighty involved in this proceeding, that is so indicated is it not?

A. Yes sir.

Q. Within what distance of the south line of the south eighty acre tract is that abandoned well?

A. 506 feet.

Q. Did you notice to see if the casing was drawn in that well?

A. The casing was drawn and the drivepipe was drawn.

(Witness excused.)

D. L. OWSLEY, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. State your name?

A. D. L. Owsley.

Q. Where do you live?

A. Bartlesville.

Q. How long have you lived here?

A. Two and a half years.

Q. Have you had any connection as an employee of the Delokee Gas and Oil Company?

A. I keep the books.

Q. What books do you refer to?

A. Account books, stock books,—since I think it was June, 1904, when Mr. Coombs was made Secretary. I can't state definitely just the date.

Q. Were you in the habit of writing the minutes of the corporation?

A. Yes sir.

Q. Were you in the habit of assigning on the books of the Company the transfer of stock that was transferred?

A. I was; that is, if they were all right.

Q. Examine this stock certificate No. 173, five hundred shares of stock to James A. Veasey, and state to the Commissioner whether you transferred that certificate on the books of the Company?

A. To or from you?

Q. From me?

A. I did.

Q. Does the date of the transfer indicate the actual date of its being transferred?

A. Yes, sir.

Q. Do you recall any circumstance in connection with that transfer as an inducement to me to make the transfer?

A. Yes, I do.

Q. State that to the Commissioner?

A. Mr. Veasey was interested in another oil company, and I remarked to him one day that he had better look out,—the first thing he knew he would have more than forty-eight hundred acres of leases. He says the only thing I have got is this Mohawk Oil Company, and two leases taken in the name of Mr. Veasey and some fellow down at Tahlequah. I says you have got some Delokee Company stock. He says "That's so, I had forgotten that; I will let Mr. Coombs have them." Some time last spring I mentioned that; and a short while afterwards,—I don't know, it might have
457 been a few days, or it might have been two or three weeks; it was assigned.

Q. Do you remember the date of the assignment with reference to the Secretary's regulation prescribing that no man could be interested, in effect, in more than forty-eight hundred acres?

A. No, I can't connect that in any way with the assignment of it.

Q. In keeping the books of the Company, have you had occasion to transcribe the expenses to which the Delokee Company has been put in the Bob litigation?

A. Yes sir.

Q. Have you a memorandum of that?

A. Yes, sir.

(Memorandum attached to and made a part of the record in this case, as Contestee's Exhibit E.)

Q. Have you also prepared a memorandum of the amount paid Wallace Thursday as bonus for the Mary Thursday lease?

A. Yes, sir.

Q. I notice two amounts here, \$695.50 less \$125.50, leaving a balance of \$570.00, what does the \$570.00 represent?

A. You told me to take out some certain expenses checked there.

Q. The amounts deducted are represented by the check marks?

A. Yes, sir.

Q. Are both of these statements correct transcriptions of the record?

A. I can't say they are complete.

Q. So far as they go, they are?

A. Yes, sir.

(Memorandum above referred to attached to and made a part of the record in this case, as Contestee's Exhibit F.)

Q. Were you present in the office of the Delokee Company on the morning of the 22nd of August, this year, when Sam Bob signed the reinstatement of Veasey & Rowland as his attorneys and also the instrument directing them to proceed with the appeal of this contest case?

A. I was.

Q. Did you act in any official capacity in regard to that instrument?

A. Notary Public, yes sir.

Q. What was the condition of Sam Bob at the time, did he have possession of his faculties?

A. Yes, so far as I know.

Q. Did he have the appearance of being intoxicated?

A. He was not.

Mr. Huckleberry: Please don't lead the witness so much.

Cross-examination.

By Mr. Huckleberry:

Q. You are a stockholder in the Delokee Company?

A. I am not.

Q. You have been?

A. I have been.

Q. When did you dispose of your stock?

A. Last spring some time.

Q. Since then you have been employed by them?

A. Yes sir, oh, well, I was at that time.

Q. What did you get for your stock?

A. I don't know now.

Q. Approximately?

A. Nine or ten cents, something like that.

Q. This statement of account, which has been marked Exhibit E, included every item of cash paid to Sam Bob on behalf of Sam Bob?

A. I can't say that it does. I don't say that it was a complete statement, because I didn't keep any separate account, and

consequently I just had to go through the books and separate it the best I could.

Q. So far as you are able to give us, that is a complete statement?

A. Yes sir.

Q. How have you got charged on your books this trip to Texas?

A. That is not in there at all.

Q. What is it charged to?

A. Charged to general expense.

Q. How about the trip to Oklahoma City,—what have you charged that to?

A. That is expense.

Q. To expenses too?

A. Yes sir.

Q. How about the expenses to Arkansas City since August 22, 1906,—charged to expenses too?

A. Yes sir.

Q. Not itemized?

A. No sir.

Q. What is the amount of it?

A. I can't tell you.

Q. Have you got the book here?

A. No sir.

Q. Approximately, what was the expense charged for the trip to Texas?

A. I can't say about that, because I don't know, that has been quite a while ago, and I didn't pay any attention to it. I didn't attempt to refresh my memory.

Q. Mr. Veasey didn't call your attention to that?

A. No sir.

Q. What, approximately, was the expense of the last two months?

A. I can't say that.

Q. You could furnish us those items, could you?

A. Sure.

Mr. Huckelberry: They would be interesting. We would like to see them tomorrow, Mr. Owsley, please sir.

A. All right.

Q. Now this account which has been filed as Contestee's exhibit F, shows all cash payments made to Wallace Thursday?

A. No, I can't say that it does, either. In the first place before Mr. Coombs was Secretary, Mr. Gilbert was Secretary, and when I got hold of the books I was unable to get anything straightened out, except that just so much money had been paid out for different objects and different things.

Q. So far as the account goes, it is correct?

A. Yes sir. These items are correct, anyway.

Q. Showing total paid on Wallace Thursday and Mary Thursday lease \$530.00?

A. Yes sir.

Q. And that only about \$300.00 was paid Wallace Thursday direct?

A. Let me see,—can tell you about that when I look it up.

Q. Does your book show you indebted to Sam Bob for any unpaid bonus?

A. I don't know anything about the contract.

Q. I asked you what your books show?

A. They do not.

Q. Do your books show any unpaid balance to Wallace Thursday as guardian of Mary Thursday?

A. No sir.

Q. Then, so far as your books show, all amounts of bonus that should have been paid to Sam Bob have been paid?

A. State that again?

Q. So far as your books show, all matters of bonus that should have been paid to Sam Bob, have been paid?

A. So far as I know.

Q. So far as your books show?

A. Yes sir.

Q. The same thing is true as to Wallace Thursday?

A. Yes sir.

Q. And the same thing is true of Wallace Thursday as guardian of Mary Thursday?

A. Yes sir, that is, there is nothing standing to the credit of these people.

459 Q. Did you take vouchers for these expenses to Texas, et cetera?

A. Well, we took a voucher if the money was paid here; we never done that when we gave a check.

Q. Have you a voucher system in Arkansas City?

A. No sir.

Q. You went to Arkansas City one trip, yourself?

A. Yes sir.

Q. Was that for the purpose of taking vouchers?

A. No sir.

Q. How long were you there?

A. I was there three or four hours.

Q. Just went to see about the expenses?

A. No sir.

Q. When was it you went up there?

A. 15th of September.

Q. The Company paid your expenses there?

A. Yes sir.

Q. You went on Company business?

A. Yes sir.

4:00 Q. Do you usually stay in your office as Notary Public about o'clock in the morning?

A. No sir.

Q. Was Si Johnson present that night?

A. Yes sir.

Q. What was Si doing?

A. Si was talking principally.

Q. Who was he talking to?

A. Sam.

Q. Si was doing most of the talking and persuading Sam to sign this paper, wasn't he?

A. There wasn't much talking done.

Q. Why, didn't you say Si was doing the talking?

A. No sir.

Q. What was done, was done by Si, trying to persuade Sam to sign this paper?

A. Yes sir.

Q. You have forty-five hundred shares?

A. I had five thousand; five hundred of it never appeared in my name on the books.

Q. Why does it happen you never transferred Mr. Veasey's stock on the books?

A. I usually post the stock once or twice a year.

Mr. Zevely:

Q. Mr. Veasey, referring to this five hundred shares of stock that he claims to have sold to Mr. Coombs, for \$20.00, states that when he took that stock originally he had given the Company credit for \$50.00, and then when he sold it to Mr. Coombs for \$20.00, he charged back to the Company \$30.00; do your books show anything about that?

A. No sir.

Q. Do your books show any where any authority for Mr. Veasey to sell his stock for \$20.00, and charge the Company back with \$30.00, the difference between what he paid for the stock and what he got for it?

A. No sir.

Mr. Veasey: He misunderstood me altogether. I charged them on my own books.

(Witness dismissed.)

BENJAMIN COUSINS, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. What is your name?

A. Benjamin Cousins.

460 Q. Where do you live?

A. Right south of town.

Q. Age?

A. Forty-five.

Q. Occupation?

A. Engaged in the oil business all my life; at present I take care of Mr. Markham's property.

Q. Do you know where the McDaniel property is?

A. I do.

Q. Know where the eighty south of that is?

A. Yes sir.

Q. Know where the eighty south of that is?

A. Yes sir.

Q. Are you familiar with the oil borings along the south eighty of the McDaniel tract?

A. Yes sir.

Q. We have a plat, indicating the oil borings and the wells on this land, one of which is in some few feet of the north west corner of the Bob eighty. Are you familiar with the capacity of that well?

A. I am.

Q. You have charge of that well?

A. Yes.

Q. What is the production of that well?

A. I can't just state positively, for the line wasn't taking all the oil, and we can't tell exactly;—it wasn't very big something like sixty or seventy-five barrels.

Q. When was it drilled?

A. Drilled in a year April last.

Q. What is its capacity now?

A. It has been phenomenal. We hadn't had no gauge lately; it is pretty close to the fifty barrel mark. That is the first well along there.

Q. Are you familiar with the capacity of the well indicated to the south east of the south eighty?

A. I watched that well come in; I was interested in it. I kept watching that well, and it is no good.

Q. Can't you tell how it come in?

A. It come in poor; wouldn't have done ten barrels.

Q. That was the well south east of the south eighty?

A. Yes.

Q. Here is a well indicated 152 feet south of the south line of the south eighty, do you know anything about that well?

A. That is Mr. Markham's No. 4.

Q. What is the capacity of that well?

A. When it came in we thought we had quite a well there; we haven't thought so since we examined it.

Q. About how many barrels?

A. At the very most I would say fifteen barrels.

Q. You have charge of that well?

A. Yes sir.

Q. Here is a well indicated as being 476 feet south of the south line of the south eighty, being a well immediately west of the railroad; how did that well come in?

A. Some better.

Q. Going south?

A. Going south.

Q. Here is indicated an abandoned well?

A. I plugged that up.

Q. Why did you abandon that well?

A. That well was drilled too deep. That was the first one. We didn't know much about the sand, and it made so much water we hauled it out.

Q. Here is a well indicated as being 131 feet south of the south-west corner of the south eighty, are you familiar with that one?

A. I know, it is better.

Q. How long have you been working around these two leases?

A. I have been working around them ever since Mr. Markham commenced boring them.

Q. About how long?

A. Sixteen months.

Q. How long have you been in the oil business,—about how many years?

A. Thirty.

Q. The comparative value of these two eighties for oil purposes, which would you prefer to have,—which is the more valuable in your opinion of these two eighties?

A. Well, Mr. Markham had a,—

Q. Never mind what he said?

461 A. I was going to state that there wasn't any oil close to the line of the south eighty,—I wouldn't say it is worthless because it takes a drill to tell that, but it don't look good to me.

Cross-examination.

By Mr. Huckelberry:

Q. A good many things don't look good to you in the oil business?

A. I am here to state what I know.

Q. What capacity are you working in out there?

A. Mr. Markham's manager.

Q. What do you mean by manager?

A. If he asked my opinion on a location and I said I didn't think it was a good one, I think he wouldn't drill it.

Q. Isn't he an oil man?

A. He is.

Q. He would want you to give him information on a location?

A. Yes sir.

Q. He would be governed by your opinion would he?

A. Yes sir.

Q. How much money do you get?

A. Well sir—

Q. I want to know what you get now?

A. Mr. Markham give me \$250.00 at the start as a present, and he gives me \$90.00 a month.

Q. You have been making these locations for Mr. Markham, is that right?

A. I didn't say I made them.

Q. Every darn one of them turned out to be a light well?

A. No. They are the best wells in the field. I was talking about two leases.

Q. The locations on the lower lease were made under your directions the same as these on the upper lease?

A. Yes sir.

Q. Were you present when one of these wells were drilled too deep?

A. Yes sir.

Q. It was drilled too deep?

A. We seen it was not such a good well, and we keep going deeper. We didn't know so much about the formation.

Q. And you couldn't tell from the sand when to stop?

A. When we saw the sand and saw it was watery sand it was too late to stop.

Q. How does an oil man ever know when to stop?

A. Great many of them does go too far.

Q. You happened to be one of them?

A. Yes sir.

Q. How long since you were a producer of oil yourself?

A. Well, I owned some production in Pennsylvania.

Q. You haven't owned any since?

A. No sir.

Q. What is the line of business that you have been following since then?

A. I was manager of the South Penn Oil Company for seven years previous to coming here.

Q. Are you right sure Mr. Markham wouldn't make a location without consulting you?

A. Certainly I am sure of that.

Q. You are a more experienced oil man than he?

A. That is the reason he has got me there.

Q. We will take the north west well, you say it is a sixty barrel well?

A. Yes sir.

Q. Was that well shot or natural?

A. Shot.

Q. How much did you use?

A. How much glycerine?—I don't remember that exactly, but we shot that pretty heavy.

Q. Shot that one heavily?

A. Certainly.

462 Q. What do you call heavy shooting,—how many quarts?

A. According to the field you are in.

Q. In this field, on that lease, about what do your charges run?

A. We shot that up with just what we could get in that, 140 or 150 quarts.

Q. You might have shot this one with 180 quarts?

A. No.

Q. How much?

A. I can't state positive, 160 along there some where.

Q. You shot that well?

A. Yes sir.

Q. And the most it is producing is about sixty barrels?

A. Some where along there, between sixty and seventy-five. We can't get an accurate gauge.

Q. That is a pretty good idea?

A. Yes sir.

Q. That well is still making fifty barrels?

A. Some where between forty-five and fifty.

Q. Didn't you say fifty awhile ago?—Wasn't the original figures sixty and dropped to about fifty?

A. You give that statement the way I give it. We can't get no question right.

Q. You say it dropped down between forty-five and fifty?

A. Some where about that.

Q. How much sand in that well?

A. You get the sand, understand,—let me explain it to you. It comes in sand for about the first 50 feet, if you get oil. After we get down about forty of fifty feet more from where we first get oil, we get sand.—Now can I get that into you?

Q. No.—If you will not try to ask me questions, and not try to educate me, we will get along better.

A. Well you need educating.

Q. How much pay sand did you have in that well?

A. At the top you get a little pay.

Q. How much did you have in that well?

A. I didn't measure it to the inch. At the top we get a little pay, and if we don't get no bottom pay we got a light well. If we don't get the lower pay we know we got a light well.

Q. What did you get in this well?

A. We got both pay.

Q. How much pay sand did you get in this particular well?

A. I don't know exactly to the inch.

Q. About how much?

A. Twelve feet.

Q. You shot that at twelve feet?

A. One hundred and sixty quarts—we shot it from the start.

Q. And it came in a sixty or seventy-five barrel well?

A. Yes.

Q. And now after one year and a half it is making forty-five or fifty barrels?

A. Yes.

Examination.

By Mr. Veasey:

Q. You are familiar with the wells drilled in on the McCaleb tract, are you not?

A. Yes.

Q. How far are the McCaleb wells from the eighty acre tract south of the McDaniel tract?

A. Near it; 125 feet from the line.

Q. In addition to that one, then there is another one five hundred feet west?

A. The location is five hundred feet apart.

Q. What is the capacity of these wells, first capacity of these wells?

A. This No. 1, we been talking about,—the next one due west of

463 that, best it done was ten or eleven feet,—33 barrel to the foot.

Q. What is that well doing now?

A. Well, that well today is doing two hundred barrel.

Q. How long has it been drilled?

A. In a year in May.

Q. That is five hundred feet straight west of this No. 1?

A. Yes.

(Witness dismissed.)

Mr. Veasey: Contestee will rest after the introduction of the following witnesses: Mr. Lannom, Mr. Beatty, Wallace Thursday, Anna Martin, Percy D. McConnell, and George D. Slemaker.

We want to file certified copies of the inventory of Wallace Thursday as guardian of Mary Thursday; (Contestee's Exhibit G).

Certified copies of his inventory as guardian of Sam Bob (Contestee's Exhibit H), and finally certified copy of the order of court discharging Wallace Thursday as the legal guardian of Sam Bob (Contestee's Exhibit I), and directing him to pay Sam Bob Eight hundred dollars (\$800.00) being all the funds in his hands belonging to Sam Bob.

Mr. Huckelberry: Mr. Veasey, did you prepare these reports and secure these orders as representing Wallace Thursday as guardian?

Mr. Veasey: I prepared the inventory of Wallace Thursday as guardian of Mary Thursday, and I did the same for him as guardian of Sam Bob, and a supplementary inventory was filed in the case of Sam Bob, indicating that he had eight hundred dollars in cash belonging to the estate. I didn't prepare this final order of court discharging Wallace Thursday.

Q. Did you prepare the report upon which it was based?

A. Our firm did.

Witness for Contestant.

JAMES M. McCORMICK, being duly sworn by Commissioner Bixby, testified as follows:

464 Direct examination.

By Mr. Huckelberry::

Q. What is your name?

A. James McCormick.

Q. Residence?

A. Bartlesville.

Q. Age?

A. Fifty-eight.

Q. Business?

A. Contracting and prospecting oil.

Q. How long have you been in the oil business?

A. Over 40 years.

Q. Has that been your sole occupation all that time?

A. Yes.

Q. How long have you been in the Indian Territory field?

A. Come here three years ago last August or July, and been away may be six months.

Q. Been operating in this field during that time?

A. Yes sir.

Q. To what extent have you operated here?

A. Drilled forty or fifty wells, and contracted to drill twelve or fifteen more.

Q. Are you familiar with the value of oil properties in the locality of Bartlesville?

A. Here?—Yes, pretty well.

Q. Are you acquainted with the tract of land in controversy in this case, being the eighty acres nearly immediately south of the McDaniel Addition here in town?

A. Slightly.

Q. Are you acquainted with the wells on the McDaniel land?

A. Been past them.

Q. Do you know anything about the wells on the west side along the line?

A. Something, yes.

Q. Witness's attention is called to a plat prepared by J. E. Hickey, Surveyor, dated September 21, 1906, of the town of Bartlesville in the vicinity of the south eighty. I call your attention to the McDaniel eighty and the string of wells along the south side of the McDaniel eighty, on the north of the eighty in controversy?

A. I have been past these wells.

Q. Saw some of them drilled in?

A. Been there after they shot them.

Q. Are you familiar with the Lannom wells on the west side?

A. Yes, I been past them.

Q. I will ask you if you are familiar with the wells along the south eighty?

A. Not as much as I am with the wells this way. With the wells on the McDaniel tract I am more conversant with them.

Q. Are you familiar along the south east of the south eighty, shown on this plat?

A. I know there are wells there, but I don't know their value. What I know about them would be hearsay.

Q. Do you know about how long ago the McDaniel wells were drilled in?

A. Year ago last summer.

Q. What in your judgment, has been the decrease, if anything, in the value of the north eighty for oil purposes on account of the drainage by the McDaniel wells and the Lannom wells?

A. I wouldn't think more than 20 or 30 per cent.

Q. That much decrease in the value of the north eighty since the drilling of these wells?

A. That is my opinion.

Q. Are you sufficiently familiar with the conditions prevailing in

the wells around and about the north eighty and the south eighty to have an opinion as to the relative value for oil purposes 465 of these two eighties at this time?

A. I wouldn't think there was much difference of either eighty from an oil standpoint. There has been much more oil taken on the McDaniel side than on the other side.

Q. This side, referring to the north side of the north eighty?

A. Yes sir.

Q. If the lease of these two lands were offered for sale, which, in your opinion, would command the highest market price?

A. I wouldn't think there was much difference at this time.

Q. There would be no difference at all in the value of the two eighties?

A. I can't see any difference in them today.

Q. Do you think you would give as much for the south eighty as for the north eighty?

A. Yes.

Q. You are acquainted with the value of the lands for townsite purposes, are you?

A. No, not much.

Q. What is the effect of drilling oil wells on lands as to their value for townsite purposes,—building purposes?

A. I would think that the drilling of wells would depreciate the value very much.

Q. Are you interested, Mr. McCormick, in this controversy in any way?

A. No sir.

Q. Are you interested in the Test Oil Company?

A. No sir.

Q. Not related to Ella E. Heady or Bud Heady?

A. No sir.

Q. Have you been an oil producer during your experience for the last forty years?

A. I commenced drilling when I was a small boy. I have done everything pertaining to the business.

Q. In what fields?

A. Pennsylvania, Ohio, New York, Indian Territory and a little in Kansas.

Cross-examination.

By Mr. Veasey:

Q. Have you ever done any drilling for the Test Oil Company?

A. No sir.

Q. What knowledge have you of the capacity of the wells on the McDaniel location?

A. No knowledge at all, only what they told me.

Q. What did they tell you?

A. Told me they considered them nice big wells.

Q. Do you know anything about the capacity of the wells immediately to the west of the eighty south of the McDaniel eighty?

A. Nothing only what Mr. Renfro and Mr. Lannom told me. They told me they were good wells.

Q. These three wells immediately west of the north eighty, referred to here?

A. Yes.

Q. Do you know anything about the production of the Markham wells?

A. Nothing only what Mr. Markham told me.

Q. What did he tell you?

A. Told me they were the best wells he ever had anything to do with.

Q. You base your opinion upon information from these parties you are talking about?

A. Yes sir.

Q. Do you know anything about the capacity of the well indicated as being 131 feet west and south west of the south eighty at this point,—Lannom property?

A. No, I guess not.

Q. Do you know anything about an abandoned well then 506 feet south of this south eighty?

A. Whose well is it?

466 Q. Markham's?

A. No sir.

Q. Do you know anything about this well indicated as being 152 feet south of the south line of the south eighty, east of the railroad?

A. I don't know anything about any particular well.

Q. Mr. McCormick, in the light of what McDaniel, Booker, and Markham and Lannom told you about the production around the north eighty, and in the light of the fact that Mr. Markham's lease man has testified about this well being 152 feet south of the south line of the south eighty came in a ten or fifteen barrel well, and that the well indicated here has been abandoned, and this well indicated as being 476 feet south of the south line is a well of about twenty-five barrels; that the well on the southwest here is indicated here as about a ten barrel well, and that the well two hundred and twenty feet southeast of the south eighty is a small well,—considering that in connection with what you know of the north eighty which, in your opinion, is the most valuable for all purposes, if what I tell you is true?

A. Two years ago there would have been a great difference. These wells has diminished it 15 to 20 per cent, owing to the wells on the north and west of the lands in controversy.

Q. The presence of wells of small capacity indicates the oil is poor?

A. Not always.

Q. What is the character of the oil sand in the locality of Bartlesville?

A. Some places it is porous, and some places it is close.

Q. Do you know the character of the sand on the McDaniel tract?

A. No sir, only what they told me?

Q. Whether it was loose or tight?

A. I don't know as we discussed it in that way. We talked about it being nice sand.

Q. When were these McDaniel wells drilled?

A. Drilled in about a year ago, last June or July.

Q. At different times?

A. One or two at a time.

Q. When were they finished?

A. It was I think before September of last year.

Q. How far would those wells on the McDaniel tract drain, in your opinion, the north eighty of this land?

A. Just as far as that eighty is from the other eighty.

Q. About how far?

A. I can't give you any information on that, but I understand they are going to drill from both sides.

Q. Upon what do you base your opinion that the drainage has resulted in a depreciation of from 20 to 30 per cent?

A. Well from the position that I take that there is about so many barrels under each acre. There is so many barrels under each acre, and when that is taken out there is that much less left there.

Q. Haven't you made up your mind as to how far oil would drain in this country?

A. No sir.

Q. Approximately?

A. I think it will drain anywhere from one to a thousand feet.

Q. Do you know how the average oil man believes as a rule upon that question?

A. There is no way to test your opinion.

Q. The usual opinion among oil men?

A. I never discussed it with them. There is a difference of opinion, I presume.

Q. Just because of the fact that this property has been drained, you think there is no difference?

467 A. Yes sir.

Q. Two years ago there was a large difference?

A. Oh, yes.

Q. Isn't it true that after wells have been drilled in near the line and then offset wells are drilled, that the offset wells usually come in about the same capacity as the old wells are?

A. If they are drilled the same time they will come in the same.

Q. After an interval?

A. No sir, it is not a fact.

Q. For instance if these wells north of the north eighty are doing from sixty to seventy-five barrels a day, and wells are located south of these wells, would they come in at the same capacity?

A. I don't think so.

Q. They certainly wouldn't come in at a greater capacity than the first wells had come in?

A. I wouldn't think so.

Q. Haven't you heard of oil men when they wanted to offset wells drilled near the first wells, and that the offset wells compared favorably with the original wells?

A. In ninety days or sixty days from that I would not think there would be any difference, but within six months a great deal of difference.

Q. Do you mean to say that if the five wells of Mr. McDaniels, as testified to by Mr. Booker, after having been drilled in for eighteen months, are doing now in the aggregate 225 barrels a day, that that property is not more valuable than the south eighty, where the entire production of these wells was ten, fifteen or twenty-five barrels?

A. I don't quite understand.

Q. The situation is this, Mr. Booker has testified that these wells came in with greater capacity, and that at this time they are producing in the aggregate 225 barrels. These wells after having been in twenty-two months are still doing 225 barrels in the aggregate, and the wells that have been drilled in near the south line are doing ten, fifteen and twenty-five barrels, do you still regard the south eighty as having the same value as the north eighty?

A. It would be in my opinion.

By Mr. Huckleberry:

Q. On the theory that these McDaniel wells were drilled within about sixty feet of the north line of this land in controversy, and started some two years ago with a total production of between six and seven hundred barrels, and today are not doing in excess of two hundred or two hundred and twenty-five barrels, what would you say as an oil man,—would you drill an offset well within sixty feet south of the south line of those wells, or would you go back further from that line?

A. I would try to get back so far as I could, so as not to be in the drained territory. You couldn't expect over twenty-five barrels down here.

Q. In order to get anything like a good well, you would have to go how far back?

A. Five or six hundred feet.

Q. North five or six hundred feet of the land in controversy from an oil standpoint, is practically valueless?

A. Yes sir.

Q. Is that on account of the present price of oil, or can a man afford to drill oil wells on that land on thirty-nine cent oil?

A. That is my opinion.

468 Recross-examination.

By Mr. Veasey:

Q. You have testified that if wells were drilled in within five or six hundred feet of the north line of the north eighty, that they would probably come in twenty-five barrels?

A. I said if they was all drilled the same distance. These wells was 225.

Q. How far south of the north line of the north eighty would you have to go in order to get wells producing twenty-five barrels each?

A. Five or six hundred feet.

Q. If you went that far you would get good wells?

A. I would think you would.

Q. Then if the wells drilled in against the south line came in doing ten or fifteen barrels, do you see any difference between the value of these two properties?

A. I do not for the simple reason that this territory is drained, and that is not. This has been drained (north eighty), and that is not (south eighty).

(Witness dismissed.)

Mr. Bixby: The hearing will be continued until 8:30 a. m. tomorrow.

November 27, 1906, 8:30 A. M., in pursuance of adjournment above noted, this case was called for further hearing.

ROBERT L. BEATTIE, being first duly sworn by Commissioner Bixey testified as follows on behalf of the Contestee.

Examination.

By Mr. Veasey:

Q. State your name?

A. Robert L. Beattie.

Q. Age?

A. Forty-seven.

Q. Where do you live?

A. Bartlesville.

Q. What is your business?

A. I am cashier of the Bartlesville National Bank.

Q. Are you acquainted with Wallace Thursday of Bartlesville?

A. Yes sir.

Q. Have you looked at the records of your bank to ascertain the deposits made by Wallace Thursday or some one for him in the last two years?

A. Yes sir.

469 Q. Of \$2700.00?

A. Yes sir.

Q. When was that money first placed on deposit in your bank?

A. The first deposit was made on April 2, 1904, \$300.00, and on April 9, same year, \$2400.00.

Q. Making a total of \$2700.00?

A. Yes sir.

Q. In whose name was that money deposited?

A. Wallace Thursday's.

Q. Individually?

A. Yes sir.

Q. Did Wallace Thursday deposit that money himself, or do you know?

A. Our records show that to have been deposited by Mr. C. C. Julian.

Q. Is that money on deposit in your bank now?

A. Part of it.

Q. How much of it?

A. \$2170.

Q. To whose credit is that money now?

A. Wallace Thursday's.

Q. Has the difference between \$2700.00 and \$2170.00 been drawn by Wallace Thursday?

A. Yes sir.

Q. His individual check?

A. Yes sir.

Q. Has there been any interval between the time of the first deposit and the present during which that money was not on deposit in your bank?

A. Yes sir.

Q. Does your memorandum indicate that interval?

A. Yes sir.

Q. What was that?

A. On October 17, 1904 the deposit was withdrawn and was re-deposited in April 14, 1906.

Q. Does your memorandum indicate—Have you a knowledge as to where the money was in the meanwhile,—April, 1906?

A. Yes sir, redeposited that day.

(The question here arose as to whether the money was redeposited on April 14, 1906, and witness was excused to go to his bank and examine his books).

H. D. LANNOM, being duly sworn by Commissioner Bixby, testified as follows on behalf of the Contestee.

Examination.

By Mr. Veasey:

Q. State your name, age and post-office address?

A. H. D. Lannom, 36, Bartlesville.

Q. Are you a citizen of the Cherokee Nation?

A. Yes sir.

Q. In what way?—An intermarried citizen?

A. Intermarried citizen.

Q. Are you familiar with what is commonly known about here as the McDaniel 80?

A. Yes sir.

Q. Are you familiar with the eighty south of that?

A. Yes.

Q. And the one south of that?

A. Yes sir.

Q. Do you, or any member of your family, own lands in the neighborhood of the tract I have just mentioned?

A. Which one of the tracts?

Q. Either the McDaniel or the two eighties south of it?

A. Yes sir. We own lands adjoining the McDaniel eighty and the eighty south of that, and I have an eighty in contest south of it.

Q. Are there any oil wells on the land immediately adjacent to the McDaniel eighty, or the one south of that?

A. Yes sir. We have some wells bordering on the eighty just southwest of the McDaniel eighty and we have a well at the southwest corner of the next eighty adjoining the third eighty.

470 Q. I will ask you to examine the plat which has been introduced in evidence and indicate whether or not,—to take that on the line of the west eighty whether or not they are correct locations of wells that have been drilled on your lands?

A. Yes sir, they are about right.

Q. Which of those four wells were drilled in first?

A. I believe this well was drilled first, that is the well?

Q. Southwest of the south eighty of these two eighties?

A. Yes sir.

Q. And as indicated here about 130 feet from the line?

A. Yes sir, something like that.

Q. When was that well drilled in?

A. I don't remember just exactly but it has been more than a year ago.

Q. How did that well come in?

A. That is quite a small well. It has made about ten barrels a day.

Q. Was ten barrels a day its initial production?

A. Never much better; probably made 25 barrels on being shot but soon settled down to ten barrels.

Q. Now relative to the wells on the land adjacent to the north eighty?

A. This one.

Q. The one on the north?—

A. Yes sir.

Q. When was that drilled in?

A. More than a year ago.

Q. How did that come in?

A. That wasn't a large well. That was about 30 or 40 barrel well, after being shot; made probably 50 barrels.

Q. Which of the three was drilled next?

A. This one (indicating middle well west of the north eighty);

Q. About how long has that been drilled in?

A. Well, I judge that has been drilled probably eight months.

Q. How did that well come in?

A. That is a better well than this one.

Q. About how many barrels?

A. I suppose something like 75 barrels.

Q. Now the third well, the one south of the other two?

A. Are you sure about that well; are you sure about that well being there?

Q. I am sure I can not say. This is the work of a surveyor. I don't know a thing about it myself.

A. I know we had a well in the sand that stood there a long time. Well it is a better well than either of these (indicating the south wells).

Q. About how many barrels did that come in?

A. Well, that well has never been shot, but I judge it would be a 100 barrel well.

Q. Are you familiar with the McDaniel wells north of the eighty acre tract?

A. No sir, I can't say that I am. I have understood these are better wells out this way (toward the west, indicating).

Q. You mean the west wells of the McDaniel wells, are the better?

A. Yes sir, these wells over here.

Q. Do you know anything personally about the wells south of the south eighty?

A. No sir, I don't know; only hearsay.

Q. Which of those two eighties do you regard as the more valuable for oil purposes, in the light of what you know of the production of oil?

A. —.

Mr. George: We object to the question, because it is indefinite as to the time.

Mr. Veasey: It doesn't make a particle of difference. This has been in contest two or three years.

471 A. I would like to say before answering I am not much of a judge on oil matters, but if I was selecting the two lands I would select the north eighty.

Q. It is a matter of opinion?

A. Yes sir.

Q. How many wells have you drilled in on your own lands?

A. We have 25 or 26 wells out there.

Q. You have kept in touch of those developments right along?

A. Yes sir.

By Mr. Bixby:

Q. In stating that if you had your choice of the two 80's you would take the north 80 in preference to the south 80, you mean to refer to the present time?

A. Yes sir. If I had my choice of the two right now, I would take the north.

By Mr. Rodgers:

Q. Are there any wells drilled on the Zora Lannom land or the Keys land between the three wells from the north here on the Zora Lannom land and the well at the southwest corner of the south eighty?

A. No sir, there is none in between them.

By Mr. Veasey:

Q. When you drilled in this first well, the one being at the southwest corner of the south eighty, if that had come in good which way would your production have taken?

By Mr. Huckleberry: Objected to,—that is calling for a conclusion.

Mr. Bixby: Objection sustained.

Examination.

By Mr. Huckelberry:

Q. From your testimony, the south well, your south well, on the Zora Lannom tract as shown on the plat, is much the better well of the three that adjoins her?

A. Yes sir.

Q. The north well came in over a year ago, and what was its initial production?

A. Something like 30 or 40 barrels.

Q. What is its present production?

A. I don't suppose that it is making over 20 barrels.

Q. And the well immediately south of that, the initial production was what?

A. Something like,—It was about a 50 or 60 barrel well.

Q. And what is it doing now, in your judgement?

A. Well, those wells have never been worked very much; probably would make 40 barrels yet.

Q. And the south well you say on the Zora Lannom tract has not been shot?

A. No sir, but that is much the best well of the three; 472 probably would make 100 barrels if shot.

Q. Now the wells along the north line, the McDaniel well, have been worked hard, have they not?

A. Yes sir.

Q. There has been quite an amount of oil extracted from those wells in the past two years?

A. Yes sir.

Q. Is it not a fact, or do you not believe, that these McDaniel wells, which are within 60 to 70 feet of the north line of this eighty, have drained quite a lot of oil from beneath the north eighty?

A. If they have been worked very hard, I would think so.

Q. Has not that decreased the value of the north eighty considerably from its original value?

A. Well, it is generally supposed that draining a piece of territory does not do it any good.

Q. Are you very familiar with the production at the south east corner, or just south east of the south eighty?

A. No sir, I don't know much about that.

Q. Do you not know generally there is a large production—some large wells?

A. I have understood so, but personally know nothing about it.

Q. Don't you believe, as an oil man, that the trend of that oil belt runs from the Zora Lannom on the north west in through to this south east corner?

A. Well, the indications tend a little that way.

Q. If that is true, would it not be a fact that the center of that

trend is in the south eighty instead of the north eighty, and is not that shown also by the fact that the east well on the McDaniel land is practically shown to be an edge well?

A. It would particularly look as though the trend was through there.

Q. It is just simply a matter of opinion whether one eighty is better than the other for an oil proposition in your mind, is it not?

A. Well, no man could tell which is the best. Of course, my preference would be for the north.

By Mr. Veasey:

Q. Mr. Lannom, do you know of your own personal knowledge of this well to the southwest of the south eighty is of a small capacity. Markham's manager testifies that this well east of the railroad and 152 feet south of the south eighty is a 10 or 15 barrel well and came in as such, and that the well west of the railroad and 476 feet south of the south eighty, is a 20 or 25 barrel well, and came in at that, and that he had personal knowledge of the well 200 feet south east of the south eighty, was a small well,—taking that into consideration with your knowledge of your wells west of the north eighty, and such knowledge as you have of the McDaniel wells and the Markham wells to the northwest, in your judgment which is the more valuable for oil purposes?

A. Well, they both look pretty good to me. As I remarked before, as my choice I would take the north eighty.

(Witness excused.)

By Mr. Veasey:

We have prepared statements showing all the expenses of the Delokee Gas & Oil Company in paying the expenses of Sam 473 Bob to Texas, and Arkansas City and Denver, etc., which we intend to give to Mr. Bixby at the close of this hearing, but if you are willing to give a list of your expenses which the Test Oil Company are put to in taking Sam Bob to Washington and Texas we are willing to submit it now.

By Mr. Huckelberry: We don't care one way or the other; you can do just as you please about it.

P. D. McCONNELL, being duly sworn by Commissioner testified as follows on behalf of Contestee:

Examination.

By Mr. Veasey:

Q. State your name, age and postoffice address?

A. P. D. McConnell, 34, Bartlesville.

Q. What is your business?

A. Oil producer.

Q. What experience have you had in producing oil and in what places?

A. About 15 years.

Q. In what place?
A. Bartlesville, West Virginia, Ohio, Pennsylvania, Kansas and Indian Territory.

Q. Have you drilled any wells in the Osage reservation?

A. Yes sir.

Q. How many wells are you interested in now?

A. Between two thousand and twenty-five hundred barrels a day.

Q. Well, Mr. McConnell, what is the average interval between the location of wells in this field?

A. Distance between the wells?

Q. Yes?

A. About 500 feet. One well to five acres.

Q. Why are the wells located five hundred feet apart?

A. Well will drain that much territory.

Q. Do you mean it will drain 500 feet, or 250 feet?

A. It will drain a radius of 250 feet from the location, a distance of about a hundred feet.

Q. And that is the custom in this country, to put them five hundred feet apart?

A. About the custom; it varies a little here.

Q. Have you or have you not, any personal knowledge of the drilling and production in the neighborhood of the land that is in contest between Sam Bob and Ella E. Heady?

A. I just know where the land is and have seen the leases there, but have no personal knowledge of the depth of the wells.

Q. Well, Mr. McConnell, if wells are drilled within 80 feet of the line of a tract of land and have been drilled in at a capacity of from 250 in the case of some of the wells, to 25 in the case of others, and that drilling was done in one case about two years ago, how far south of those locations would you think that that land would be drained within that time?

A. I wouldn't like to say how far, I would simply have to estimate it.

474 Q. Now, from your experience as an oil man, if a well was drilled in within eighty feet of a tract of land two years ago, and came in producing 250 barrels, and is now producing about 50 barrels, and a well were drilled in 250 feet or 150 feet, south of the line what would be the probable production of that well?

A. Well, that well would no doubt show a little drainage.

Q. What has been your experience along that line,—personally your own experience, say if the first well came in doing 250 barrels and has decreased to about 50 barrels, then you would drill an offsetting well, what has been your experience upon cases of that kind?

A. The well you would drill would be about a fifty-barrel well, after the first 15 days it would correspond to the shrinkage of the well across the line.

Q. You would say in the light of your experience that if offsetting wells were drilled in within 150 feet or 250 feet of the line of this territory that the actual production of those offsetting wells

would be substantially the same as the present production of the wells offset?

A. I would say the initial production would be a little larger but inside of 30 days I think their production would be practically the same as the wells across the line are making now.

Q. Then if Mr. Booker testified that five wells that have been drilled in in two years are now producing 225 barrels, then if five wells were drilled across the line their initial capacity would be more than 225 barrels?

A. Yes sir, I think so.

Q. And their natural production would be 225 barrels?

A. Yes sir, as I understand it.

Q. Mr. McConnell, regarding the plat which has been introduced in evidence in this case, Mr. Booker, who is interested in the McDaniel eighty has testified that the well farthest east from the railroad had an initial capacity of 25 barrels, that the well going westward from that one had an initial capacity of about 25 barrels; that the well,—the next well, going westward had an initial capacity of about 250 barrels, the largest of the number; that the well second from the railroad going eastward had an initial capacity of about 150 barrels, and that the well against the railroad had an initial capacity of about 75 to 100 barrels. The lease man of John Markham, who has a lease cornering on the eighty I have just described, being the north eighty, has testified that a well within fifty or sixty feet of the northwest corner of the eighty was drilled in doing between fifty and seventy-five barrels, and that it maintained about 50 barrels after having been drilled a year. Mr. Booker testified that the wells which I referred to, were drilled within any where of from one to two years, and that their present aggregate production is 225 barrels. Mr. Lannom, who is interested in the wells on the Lannom tract immediately west of the north eighty in contest has testified that the wells farthest north came in doing 30 or 40 barrels, and that the well between the two was a better well, came in doing probably fifty barrels, and that the well farthest south here, which has not been shot, will probably do 100 barrels, and Mr. Lannom testified that there has been a corresponding shrinkage in the production of those wells drilled a year ago. Mr. Lannom also has testified that the well indicated on the plat as being of 131 feet west of the south west corner of the south eighty, came in doing about ten barrels, and substantially is holding that. The manager of John Markham who is drilling
475 part of the lease immediately south of the south eighty testified that the well indicated as being 152 feet south of the south eighty immediately east of the railroad came in doing 10 or 15 barrels; that the well 476 feet south of the south eighty and west of the railroad came in between 15 and 25 barrels; that the well of which he says he has personal knowledge within 220 feet of the south east corner of the south eighty is comparatively a small well, producing about 25 barrels. In the light of the testimony which I now call your attention to, if that has been the testimony, which in your judgment is the more valuable of the two eighty acre

tracts, that are involved in the description that I have given you from an oil standpoint?

A. I consider the north eighty the more valuable.

Q. Would you place a relative value that one was worth many times more than the other, or the reverse?

A. I don't believe I would care to say.

Q. If what I say is true?

A. If what you say is true the north eighty is worth considerable more than the south eighty.

Q. What does the small production of the wells toward the south indicate to your judgment?

A. Indicate less sand measure than they have at the north. Doesn't show the sand, nor is it so productive.

Q. If what I have stated is true, can you indicate to the Commissioner in your judgment what is the probable trend of the oil sand with respect to those two eighties?

A. Well, it is pretty difficult; take the wells on the north and the wells on the south, they are right good wells, falling off as you go toward the south.

Q. What does that indicate?

A. Well, the wells show the best production is along the north line of the 160 acres.

By Mr. Huckelberry:

Q. Now Mr. McConnell, after all of this you have got to take some other man's word as to what the wells are doing?

A. I know this pretty well.

Q. You are stating that simply from what Mr. Veasey told you a moment ago?

A. Naturally always understood those five wells right south of the town produces a lot of oil, in fact I have seen one or two of them shot.

Q. Those wells are all within 60 to 80 feet of that north eighty?

A. They are close to the line I have always understood.

Q. You know the reason was so they could drain the north eighty as much as possible, without interfering with an offsetting well?

A. I suppose that is the idea.

Q. Now are you familiar with the wells which have been drilled here on the south east forty, being the wells on the Steven Miller tract and those drilled by Mr. Johnson on the Buford tract?

A. No sir, I am not familiar with them.

Q. You know there are quite a number of wells down there?

A. Yes sir.

Q. And you know there is quite a large production?

A. I can not say as to the production.

Q. You have heard generally that there is a large production, have you not?

A. I have heard there has been nice wells down there, but as knowing it personally I couldn't say.

Q. You have heard also there are some large production on the Mary Thursday lease?

A. Well I have read in the papers there has been wells
476 drilled in there.

Q. You have had no property in this immediate neighborhood, have you?

A. No sir.

Q. Isn't it a matter of fact that this east well on the McDaniel eighty was a very light well, and showed considerable gas?

A. Mr. Veasey stated the well was a 25 barrel well.

Q. Outside of that, do you know personally that that was a light well?

A. I believe I did hear it wasn't as good as the other well.

Q. Don't you know also that in the south east corner, marked as the Leander Johnson 40, there is a large gas well?

A. Yes sir.

Q. Don't you know also that there is in the center of the west forty of the McDaniel land a large gas well?

A. I don't know whether that well was drilled into the oil sand or not; I know it was a gas well at the time.

Q. Now, taking the fact, Mr. McConnell, that the south well on the Lannom tract shows 100 barrels natural, and being much the better well of the three on the Lannom land, isn't that an indication that the south well is nearer the center of that trend than the north well?

A. Well, I wouldn't know whether it would be nearer the center or a loose place in the sand; it is hard to determine that, would speak of it as the center.

Q. Speak of it that way, near the center?

A. Speak of it as a loose place in the sand.

Q. I heard you mention an edge well?

A. That is where the sand measure is considerable less than the other place.

Q. Well, suppose the sand measure in this well was greater than either the north well on the Lannom land or the south well on the Keys, what would that indicate to your mind?

A. That would no doubt make a large well.

Q. Now, take it also that this east well here on the McDaniel land showing gas, with a small amount of sand, would that not indicate also that that is an edge well?

A. That would indicate it is running into the gas.

Q. Taking that this well here is also a light well, with a small amount of sand, referring to the well on the Mary Thursday land, 152 feet south of the south eighty, and immediately east of the railroad, that would indicate perhaps that that was an edge well?

A. Well, it wouldn't indicate it was an edge well, without a well farther away from it.

Q. And especially true, if there was a heavy production just on south of it?

A. Well that would depend on the amount of sand they got in each of the wells.

A. Now take it also that in the wells immediately south of the south east corner there is a very heavy production showing top

sand and corresponding with the sand as shown in the south well on the Zora Lannom tract, would it not indicate to you that the trend of that would run from or between the Zora Lannom wells and these wells here at the south east corner of the plat?

A. That would not indicate it any more than — it ran from this good well here to these wells. (Witness indicates from the middle McDaniel well south east to the south east corner of the plat.)

Q. Towards which way would you say it run?

A. I would say it would more likely run this way, because the general trend is north and south.

477 By Mr. Bixby:

Q. More likely to run which way?

A. From the middle McDaniel well to the south east corner of the south eighty. More likely to run in that direction than it is in this (referring to the south well of the Zora Lannom land to the south east corner of the south eighty).

Q. On either theory that you have mentioned as being likely under those conditions, this trend would run through the south eighty, would it not?

A. Run through part of the south eighty. Of course that is a theory.

Q. It is hardly a theory; it is more of a guess, is it not?

A. Well, I wouldn't say that it is a guess exactly.

Q. If you had been figuring without choice and knew how these sands run, you could give us a better idea?

A. Yes sir, I would know a little more about it, but at the same time I can take that method and locate more wells.

Q. The distance which an oil well drains depends on the conditions?

A. Yes, sir.

Q. Whether it is a loose or tight sand?

A. Yes, sir.

Q. And on the amount of the shot?

A. To a certain extent.

Q. And it depends also on the amount that the well has been worked, that has been doing the draining?

A. Yes, sir.

Q. And after all, there is an unknown quantity, it varies in various places as to the amount of drainage?

A. We all know from experience that wells that have been producing along the lines for two years, there is some drainage.

Q. Some times it is heavy and sometimes light?

A. Yes sir.

Q. And isn't it also a fact that one oil well, if you give it long enough time, will drain ten acres instead of five?

A. Yes, sir.

Q. Isn't it a fact that the McDaniel wells as started in with an initial production of 250 barrels and settled down to 50 barrels, what does that mean in your mind?

A. Number of things.

Q. That the flush production has been taken out?

A. Yes sir. I would think you would have to go about one thousand feet to get a good well away from that.

Q. Are you interested in any way or with any of the parties connected with this controversy?

A. No sir, none whatever.

Q. You and Mr. Veasey have some connections?

A. He represents me as attorney in some matters.

Q. Haven't you also some business relations frequently?

A. No sir, none particularly.

Q. You are actually engaged together in some business?

A. We have been, but not at the present time.

Q. That has been abandoned, now has it?

— Yes sir.

Q. How long ago did it cease to be in existence?

A. Six months ago.

Q. He is still representing you as counsel however?

A. Some matters, yes sir.

By Mr. Veasey:

Q. You intimated on your cross-examination, you would have to go eight hundred or a thousand feet south of the line of the north eighty in order to get a good well,—what do you mean by a good well?

A. I didn't exactly — you would have to go south; you would have to go that far away from those wells in any direction, and I mean by a good well one that would not show drainage.

Q. Well, what is your experience in regard to the usual
478 trend of the oil sand,—in what direction does it usually run?

A. The usual direction in the Cherokee Nation is almost north and south. Of course, it varies from that in places; that is the general trend.

Q. Well, in view of the fact that there are large producing wells on the north line of the north eighty, and wells of small capacity on the south line of the south eighty what does that indicate to your mind with reference to the usual trend being north and south?

A. Well, it would indicate that the wells would get smaller in that particular place as you would go towards the wells on the south.

Q. If it is true that there is a group of wells on the 40 acre tract south east of the south eighty, what would be your judgment as to the possible connection of those wells with wells on surrounding properties: I mean, would the wells be north and south of this group of wells or would they be north west and south east of that well. Which would be the more likely connection, if that is true and there is a group of wells on the forty acre tract south east of the south eighty; would that indicate to your mind that the land immediately north or immediately south of this particular forty which I described were a part of that trend or would it indicate that the lands to the north west and the south east were connected with that trend? Which of those two propositions in your judgment is true?

A. The drilling here seems to indicate it is north; if anything a little north west. I can not say about the south because the plat does not show to the south. You go east you run into gas.

By Mr. Huckelberry:

Q. Can a producer at the present time with the present prices of oil at 39 cents afford to drill five wells when he knew the initial production would not amount to more than 25 barrels to the well?

A. I don't think he would make any money at it.

By Mr. Veasey:

Q. Could he have afforded it when oil was at a better price, two years ago?

A. Well he could have afforded to drill those wells for sixty cents a barrel.

By Mr. Rodgers:

Q. About how wide is this strip of oil sand in this territory?

A. It is indefinite at least.

Q. Well, you are speaking of the trend of the oil sand being north and south, about how wide are those strips of producing sand?

A. Well, up here in the Webber pool east of Dewey the sand is about three-quarters of a mile wide east and west.

Q. Well now in this particular locality here in Bartlesville?

A. I wouldn't say how wide this particular development is.

Q. Well in this particular place, in this vicinity?

A. Well, this Webber pool is about four miles away; it averages there one-half a mile to a mile and quarter. They usually
479 run north and south for two or three miles; east and west for three-quarters of a mile to a mile and a quarter.

By Mr. Huckelberry:

Q. Now in speaking of the general trend of the oil sand, you would make a difference, wouldn't you, between that and the individual pool?

A. Yes, sir.

Q. Now the general trend in your judgment in this country is north and south?

A. Yes, sir.

Q. But the shape and character of the individual pool varies, does it not?

A. Well, they were irregular.

Q. Some times running in one direction and some times another, but in a general trend?

A. As a rule, they follow the general trend, but vary a little.

Q. This general trend you refer to is a section of these individual pools?

A. Yes, sir.

By Mr. Hastings:

Q. What must be the minimum production of a well in order to

be a paying well, drilled by an oil man at the depth that is usually drilled around in this immediate vicinity at the present market price?

A. That is a hard question to answer, for the reason that there are running oil very irregularly.

Q. Well, under present conditions and at the present market price of a deep well?

A. I am doing a little drilling at the present time, getting about a fifty barrel well after 30 days, and I figure just about breaking even with it.

Q. Of a fifty barrel well?

A. Yes, sir.

(Witness excused.)

R. L. Beattie, recalled:

By Mr. Veasey:

Q. What do your records show as to when that \$2700.00 was re-deposited?

A. It was re-deposited on December 27, 1904.

Q. And in what form was this deposit of \$2700 between April 9 and October 17, in the form of a time deposit or in open account?

A. From April, 1904 to October, 1904?

Q. Yes?

A. In the form of a certificate of deposit.

Q. In whose name was that?

A. Wallace Thursday's.

Q. Was that interest bearing?

A. Yes, sir.

Q. What rate?

A. Four per cent per annum.

Q. Was interest drawn on that certificate?

A. Yes, sir.

Q. By Wallace Thursday?

A. Yes, sir.

Q. In what form was the money between this re-deposit in 1904, and this subsequent withdrawal, if it were withdrawn?

A. As an individual deposit, not bearing interest.

Q. Has it been on deposit continuously since December, 1904?

480 A. No sir; there was an interval in April of that year. On April 12, he withdrew it, and on April 14, he re-deposited it.

Q. Are you familiar with the circumstances of the withdrawal?

A. Nothing any more than what our records show.

Q. What do they show?

A. A cashier's check was issued for the amount to Wallace Thursday and re-deposited.

Q. The cashier's check was re-deposited?

A. Yes sir.

Q. Who had that transaction, was it Thursday for himself or some one else for him?

A. I couldn't testify to that, but I am quite positive no one else would be authorized to draw the money except Wallace Thursday.

Q. And when was this amount that you say has been checked out,—when was that done?

A. On October 31 of the present year.

Q. Was it in a single check or more than one check?

A. One check.

Q. Do you know what that was for,—the check doesn't indicate?

A. No sir.

Q. The check was drawn by Wallace himself?

A. Yes sir.

Q. Did he actually get the cash?

A. I waited on Wallace myself at that time. The check was made payable to Ellis Hailing.

Q. You don't know what the check was for yourself, do you?

A. No sir.

Q. Leaving a balance of how much?

A. \$2170.

Q. And that is still on deposit to his credit?

A. Yes sir.

By Mr. Hastings:

Q. Do you have any personal recollection of the first deposit of that money in April, 1904?

A. No sir, I don't know that I have.

Q. Do you have any personal recollection of the withdrawal of that money in October of 1904?

A. I am under the impression that I computed the interest on the certificate of deposit for Wallace, but I am not certain.

Q. Have you any personal recollection of the re-deposit of that money in December, 1904?

A. No sir.

Q. You don't know who came in there with him in December, 1904, and re-deposited that large amount of money?

A. No sir.

Q. Your books do not show that?

A. No sir.

Q. That would not show it anyway?

A. No sir.

Q. Do you have any personal recollection now, since you have refreshed yourself by referring to your books and consulting your bookkeeper about the taking out of this money in April of this year, and who was present with Wallace Thursday when the money was so taken out?

A. No sir.

Q. And do you have any recollection of it being re-deposited in April, or do your books show?

A. No sir.

Q. Your books would not show if Mr. Veasey or members of the

Delokee Oil Company, or others, were with him at any of these times?

A. No sir.

By Mr. Veasey:

Q. You have testified that your records do show that the original deposit was made by C. C. Julian?

A. That is the ledger entry.

481 By Mr. Huckelberry::

Q. Have you memoranda showing the deposits in your bank—some deposits in your bank to the credit of Sam Bob?

A. No sir.

By Mr. Rodgers:

Q. Is there anything at all on your books or has there been any time that this \$2700.00 has been deposited there which would show that it was anything other than a personal deposit of Wallace Thursday?

A. That is all it shows.

Q. He could have checked it out personally at any time?

A. At any time.

By Mr. Huckelberry::

Q. Did you get the escrow contract,—have you it with you?

A. Yes sir. (Witness hands Mr. Huckelberry paper.)

Mr. Veasey: I should like to make a statement in regard to the whereabouts of this money, during this interval.

Mr. Bixby: Just as you please, make a statement.

Mr. Veasey: Well at the first hearing of the contest case of Heady versus Bob, \$2700.00 on deposit in the Bartlesville National Bank, on time deposit, was withdrawn to the First National Bank of Tahlequah, Indian Territory. I, acting in connection with Wallace Thursday, deposited this time certificate in the First National Bank at Tahlequah. The six months period which must elapse in order for him to draw interest had not expired by three or four days, and the First National Bank of Tahlequah held the certificate of the cashier there, giving him credit for the face of the certificate, \$2700.00, and a certified check to that amount was tendered to the Dawes Commission—after the money had been tendered. The clerk in charge of the Contest Division refused to accept the check for the \$2700.00, and between that time and December, 1904, the money was on deposit in the First National Bank at Tahlequah. Wallace Thursday desired to have the money at Bartlesville, and I went with him to the Bartlesville National Bank and drew a check which he sent to the First National Bank at Tahlequah for \$2700.00. When the rehearing came up in April, 1904, as had been my desire all along I induced Wallace Thursday to re-tender that money. We got a cashier's check from Mr. Beattie in April, 1906, which was cashed at the Bank of Commerce, I think the Bank of Commerce, in Muskogee. The tender was made that afternoon and re-

fused, and we brought the money back to the bank and they hadn't sent the \$2700.00 cashier's check for collection. We simply re-deposited the money and obtained in return the cashier's check of the Bartlesville National Bank, which, as indicated by Mr. Beattie, was re-deposited by Wallace Thursday and myself a few days later. The fact that the \$2700.00 was on deposit continuously from the time the Test Oil Company put it to the credit of Wallace Thursday up until he put it in the First National Bank at Tahlequah or the Bank of Commerce at Muskogee, this being true until Wallace Thursday without my knowledge drew the money as indicated in his testimony.

Examination of Mr. Veasey.

By Mr. Huckelberry:

Q. Mr. Veasey, during all these transactions, you were still acting as attorney for Wallace Thursday?

A. I was.

Q. These transactions as being testified to, were made upon your suggestions?

A. Yes sir.

Q. And the re-deposit was made?

A. Yes sir, but the original was not.

Q. You didn't as counsel for Wallace Thursday, advise him to report to the court in any of the various reports this \$2700.00 transaction?

A. Most certainly not.

Q. And more, was that \$2700.00 transaction mentioned in the final report made by him under the advice of your firm?

A. I never considered it as the money of Sam Bob, and therefore did not do it.

Q. An ordinary witness would not take such privileges to himself ordinarily as that, and I will ask you to remember you are a witness on the stand?

A. That is my way; I am telling the truth and I want the record to show it.

Q. I have heard other witnesses who told the truth, but I have usually had the courtesy for witnesses to answer my questions and asked to be insisted on it?

A. I presume I treat you with courtesy as other people.

Q. Well, answer my questions?

A. Well what do you want to know.

Q. I want to know why, as representing Wallace Thursday as guardian, and as a sworn officer of the court, knowing that it was the duty of the guardian to account for such funds as came into his hands out of any transactions belonging to the estate of incompetents and under his authority, no reports were made, or no notices in the reports which were made, were given concerning this \$2700.00 transaction?

A. Simply because I didn't consider it as the money of these incompetents, nor neither did you.

By Mr. Hastings:

Q. Mr. Veasey, did you not tender this money for and on behalf of Sam Bob to the Commission to the Five Civilized Tribes and to Ella E. Heady or the attorneys for Ella E. Heady during the pendency of the contest trial at Tahlequah in October, 1904?

A. I don't know as I tendered it for and on behalf of Sam Bob or Wallace Thursday as guardian of Sam Bob. I wanted to put the Delokee Company in the same position, so the record would show.

483 Q. Don't you know you tendered that money on behalf of the contestee in that contest?

A. I don't know; it is a matter of indifference to me.

Q. Did you, or did you not?

A. I don't know; I swear I don't remember.

Q. I will ask you if in April of this year, you didn't tender that money or cause it to be tendered as the money of Sam Bob the contestee? Sam Bob having become of age at that time?

A. I most certainly didn't tender that money as the money of Sam Bob, because I didn't believe it to be his money.

Q. Didn't tender it then?

A. Not in that way.

Q. Didn't you tender it on behalf of Sam Bob?

A. Not by any means. Simply wanted to get the \$2,700.00 back to where it belonged.

Q. Never did tender it on behalf of Sam Bob?—Did you ever tender it for or on behalf of the contestee?

A. I don't remember that I did or did not; the records will show.

Q. You do admit that you went with Wallace Thursday to the Bartlesville National Bank and superintended the drawing out of this money?

A. Yes sir, I do.

Q. You do admit that you went back there and superintended the re-depositing of this?

A. Yes sir, simply following the general situation. I found the money to his credit, and returned it there.

Q. But you never reported it to the court?

A. Why, certainly not. It should not have been reported to the court.

By Mr. Huckelberry:

Q. Mr. Veasey, you were still representing Wallace Thursday, did he not testify that he himself personally laid no claim to that \$2,700.00?

A. The records will show; I don't remember.

Q. Do you not remember positively that in the April, 1906, hearing when you still represented Wallace Thursday he then stated that he personally laid no claim to that \$2,700.00?

A. The records will show.

Q. And did he not say at that time and prior thereto that he considered that the money and improvements, and the money be-

cause it came from the improvements belonging to Sam Bob and Mary Thursday?

A. I don't recollect that he did.

Q. If he did make such statement then, you know as an attorney and being present at those trials that Wallace Thursday was swearing that the money belonged to the estate of those incompetents?

A. I don't know as he did swear it.

Q. Then if he did swear it?

A. I am not going to answer that; the record will show it.

Q. Then if the records do show it, then was it not your duty to suggest to the court that it was there?

A. My duty was that it didn't belong to Sam.

Q. Was it not a fact that your real duty was to your clients, the Delokee Oil Company, and that you have been serving them during these three years?

A. Only to the extent that these two person's interests were identical with each other. If it had come to a difference, I would have stood by Sam Bob.

Q. You reserve to yourself, though, the right to judge as to whether there was any conflict between the interests of Sam Bob and the Delokee Gas & Oil Company?

484 A. I am willing to submit it to any tribunal.

Q. You did reserve that?

A. Why, I am the custodian of my own conscience.

Q. You knew the court was supposed to be the proper place when large fees, matters at most, especially affecting the rights of incompetents—that the court was the proper party to decide those matters?

A. Yes sir, I have an idea that was the place.

Q. You didn't see fit however to consult the court in regard to what steps to take in regard to handling large affairs like this?

A. No sir, I didn't.

Q. If you considered that money as being Wallace Thursday's why did you tender it in the controversy between Sam Bob and Ella E. Heady?

A. Simply because I wanted to put Sam Bob in the best possible condition.

Q. At the expense of Wallace Thursday?

A. I don't know as he had any rights about it.

Q. He had as much right to the north eighty as the south?

A. I didn't know the south eighty was in contest.

Q. And doing the very same things to the south eighty you claim had been done to the north eighty?

A. Why, necessarily so; the record will show what was done.

(Witness (Mr. Veasey) excused.)

R. L. BEATTIE, recalled:

Examination.

By Mr. Huckelberry:

Q. I will ask you to state if you have an escrow contract between J. L. Moran and Sam Bob?

A. Yes sir.

Q. Is that the contract (shows witness paper)?

A. Yes sir.

Mr. Huckelberry: For identification, it may be identified as Contestant's Exhibit A.

"This agreement made and entered into by and between Sab Bob of Bartlesville, Northern District, Indian Territory, party of the first part, and J. L. Moran, also of Bartlesville, Northern District, Indian Territory, party of the second part, Witnesseth:

That the party of the first part did on the 17th day of July, 1906, make application to the Commissioner to the Five Civilized Tribes to waive his right of appeal from the decision made on the above date in the Cherokee Allotment Contest case of Ella E. Heady, Contestant, versus Sam Bob, Contestee, and also waived his right to pay in accordance with said decision the said sum of thirteen hundred and fifty dollars (\$1,350.00) in the matter of settling the contest between Ella E. Heady and Sam Bob, and also on the 20th day of July, 1906, gave written notice to the firm of Veasey & Rowland, a firm of lawyers of Bartlesville, Indian Territory, and to contestant, that the said firm of lawyers no longer represented the party of the first part in any capacity, and

Whereas, the party of the first part has waived the right
485 to refund the aforesaid amount of money and to take the part of the land awarded to him by the decision of the Commissioner to the Five Civilized Tribes, in order that he may take the eighty acres of land, being the land applied for by him, to be designated as the Delaware surplus belonging to himself and his grandmother, Mary Thursday, in allotment, which land is described as follows:

The N. E./4 of S. W./4, and the N. W./4 of S. E./4, Sec. 13, Tp. 26 North, R. 12 East, and

Whereas, Party of the second part agrees to pay as a bonus for a lease for oil and gas purposes upon the eighty acres of land, hereinabove described, the sum of three thousand dollars in cash, and other considerations as hereinafter mentioned;

Therefore, It is agreed by and between the parties hereto that the party of the first part contracts and agrees as soon as his filing and allotment is completed upon the eighty hereinabove described, being the

N. E./4 of S. W./4, and the N. W./4 of S. E./4, Sec. 13, Tp. 26 n., R. 12 East,

covenants and agrees that he will make, execute and deliver to the

company designated by the party of the second part an oil and gas lease upon the aforesaid land when allotted to him by the Commissioner to the Five Civilized Tribes and as soon as his allotment is completed. Said oil and gas lease shall be upon the form prescribed by the Secretary of the Interior, and in addition to the bonus to be paid party of the first part by the party of the second part, the party of the first part is to get a royalty of ten per cent, and

Whereas, the party of the second part, in consideration of the foregoing, covenants and agrees to place in the Bartlesville National Bank of Bartlesville, Indian Territory, a certified check in the sum of twenty-six hundred dollars, and party of the first part hereby acknowledges receipt of the sum of four hundred dollars as a part payment upon this contract, this sum to be refunded if the conditions are not complied with, and the certified check for the remaining twenty-six hundred dollars, as hereinabove stipulated, to be placed in the Bartlesville National Bank of Bartlesville, Indian Territory, subject to the order of the party of the first part, conditioned upon the approval by the Secretary of the Interior of an oil and gas lease made to the party to be designated by the party of the second part upon the lands hereinabove described after they shall have been allotted to the party of the first part.

Party of the second part also agrees to pay expenses incurred, such as traveling and board, in connection with the consummation of this contract.

Signed this 24th day of July, 1906, at Muskogee, Indian Territory.

SAM BOB,
Party of the First Part,
J. L. MORAN,
Party of the Second Part,

and acknowledged by both on the same day before D. W. Yancy, Notary Public with the proper acknowledgement-certificate."

Attached to this contract is a certified check as follows:

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No. 1003. BARTLESVILLE, INDIAN TERRITORY, July 26, 1906.

Pay to Sam Bob, or order, \$2,600.00 Twenty-six hundred dollars.

(Signed)

TEST OIL COMPANY,

By J. L. MORAN.

To Citizen's National Bank, Independence, Kansas.

Duly certified by A. W. Shulthis, Cashier of Citizens National Bank, Independence, Kansas.

Q. That was held by you in escrow, under the terms of that instrument?

A. Yes sir.

Q. Have you a further memorandum which was given you?

A. Memorandum?—No.

Mr. Huckelberry: On the back of the envelope: "Contract between Sam Bob and J. L. Moran, also certified check for Twenty-six hundred dollars, to be held in escrow by Bartlesville National Bank in accordance with the terms of the within contract."

By Mr. Veasey:

Q. Do you recall who left that contract with you?

A. It wasn't left with me in person.

Q. Were you in the bank at the time it was left?

A. Might have been.

Q. Have you personal knowledge of who deposited it in the bank?

A. No sir.

Q. Who whom was the contract to be delivered upon the fulfillment of the terms?

A. The contract itself is to guide us in that.

Q. You know as a matter of fact that Mr. George's writing is endorsed upon that envelope?

A. I would say so.

Q. You know that Mr. George is the representative of the Test Oil Company?

A. I can't state positively, I think so.

Q. Were you in Bartlesville the 23rd day of August, 1906, at which time you witnessed a letter purporting to have been written by Wallace Thursday to Honorable Dana H. Kelsey, United States Indian Agent, a typewritten letter?

A. Yes sir.

Q. Is that your signature?

A. Yes sir.

Mr. Veasey: Handing witness letter among the records in the case bearing date of August 23, 1906, addressed to Honorable Dana H. Kelsey, United States Indian Agent, purporting to have been written by Wallace Thursday.

Q. Will you state to the Commissioner the circumstances under which you placed your name to this letter?

487 A. Mr. Julian and Wallace Thursday came into the bank and asked me to sign as a witness to Wallace Thursday's signature. There was a young man sitting at the desk talking to me at the time, J. L. McCoy, and we both attested the signature of Wallace Thursday without knowing the contents of the document. I didn't know to whom the letter was addressed; I simply attested to the signature of Wallace Thursday.

Q. Was the letter read to Wallace Thursday in your presence?

A. No sir.

Q. So far as you know, was it read to Wallace Thursday in the presence of J. L. McCoy?

A. It wasn't read in my presence.

By Mr. Hastings:

Q. Mr. Beattie, you did ask Wallace Thursday if he knew the contents of that letter at the time?

A. Yes sir.

Q. And he said he did?

A. Yes sir.

Q. He also told you that in the presence of Mr. McCoy?

A. Yes.

By Mr. Rowland:

Q. Do you know whether or not Wallace Thursday can read or write?

A. I know he can't write.

(Witness dismissed.)

J. H. HUCKELBERRY (called by contestee), being duly sworn, testified as follows:

Examination.

By Mr. Veasey:

Q. Your name is J. H. Huckelberry?

A. Yes sir.

Q. What is your residence?

A. Muskogee.

Q. Attorney?

A. Yes.

Q. Have you just read a contract into the record?

A. Yes.

Q. Have you ever seen this contract previous to the time it was deposited in the Bartlesville National Bank?

A. Never saw it until this morning, until it was presented here a minute ago.

Q. Do you know D. W. Yancy?

A. Yes sir.

Q. Who is —?

A. Notary Public in the office of Gibson & Ramsey at Muskogee.

Q. Was he ever employed by you?

A. No sir.

Q. Never been in your employ?

A. Never. He was formerly a United States Commissioner at Tahlequah, and went to the Philippines and came back a few months ago.

(Witness dismissed.)

488 TOM GEORGE (called by contestee), being duly sworn, testified as follows:

Examination.

By Mr. Veasey:

Q. You are a member of the firm of George & Julian?

A. Yes.

Q. Bartlesville Attorneys for the Test Oil Company?

A. Yes.

Q. You heard the reading of a contract into the record by Mr. Huckelberry?

A. Yes.

Q. What was your first knowledge of this contract?

A. The first knowledge that I had with reference to the contract, it was brought into our office and I was requested to prepare a check and deposit in the bank in compliance with the terms of the contract.

Q. Where was this contract drawn up?

A. I have no idea.

Q. It had been signed before it was brought into your office?

A. Yes.

Q. You prepared a check and left it with the Bartlesville National Bank?

A. Yes, and the check was certified.

Q. Who brought it into your office?

A. My recollection is Mr. J. L. Moran.

Q. Resident agent of the Test Oil Company?

A. Yes sir, and one of the parties to that contract.

Q. Mr. George, do you know anything about a letter that was written in your office, purporting to be by Wallace Thursday, and addressed to the Honorable Dana H. Kelsey, under date of August 23, 1906?

A. I suppose that is a letter that I know something about (Looks at letter) Yes sir.

Q. What do you know about it?

A. I know lots about it.

Mr. Huckelberry: That is objected to as not affecting the rights of the contestant Ella E. Heady.

Mr. Bixby: Go on.

Mr. Huckelberry: Is it for the purpose of carrying out your vindication?

Mr. Veasey: Absolutely; yes sir.

A. The day the letter bears date Wallace Thursday came into our office and stated to me that he wanted to write a letter to the Indian Agent and to the Commissioner of Indian Affairs and to the Secretary of the Interior with reference to Sam Bob, stating that the Delo-kee Company had gotten him to go away from home and that they, as he understood it, were getting him into bad company and making him intoxicated, and he thought he ought to be at home. He wanted the matter called to the attention of the Department, and he wanted a letter written calling the matter to the attention of these parties, thinking they would take steps to get him back home. Mr. Julian and I were in our front room, and I had Wallace to tell over what he thought he wanted to state in the letter, and when he did that, Mr. Julian being a—

489 Mr. Hastings: Tell us what he said.

Mr. Veasey: We want to know what he said, as well as the names of the parties.

A. I will say that he told me to make the statements practically and substantially as contained in that letter. After it had been written out I went into the back room where Mr. Julian had written the letter, and I wanted to see if it corresponded with what Wallace had told us in the front room, and I didn't want anything in the letter more than he had said, and after reading the letter over I found that he had said certain things in that letter as existing as facts, and I said to Wallace "how do you know these things are true, Wallace", "why", he says "Sam told me they were true and that is what makes me say they are true." I says "then you can't say they are true", and I had some changes made; instead of stating as facts that certain things exist, we stated that we understood certain things to be true.

That is the history of the transaction as well as I remember it, Mr. Veasey. That letter was read over to Wallace before he went down to the bank,— and it was composed of two sheets. They were fastened together so they could not be separated, and were fastened together right there in the office.

Of course, I had known something about the Delokee Company as I had understood it, but I didn't know anything about it personally, because I hadn't been connected with the case personally up to that time. The case had been pending before I came to this country. I told Mr. Julian when the letter was finished up to have Wallace sign it, and he stated Wallace couldn't sign his name. I suggested then that Mr. Julian sign his name to the letter, and I says you better get some disinterested persons to witness the signature to the letter, and it was at my suggestion that the letter was taken to the bank and have some disinterested persons witness the signature to the letter.

By Mr. Veasey:

Q. At this particular time you and Mr. Julian were attorneys for the Test Oil Company?

A. Yes.

Q. You knew that they had a lease from Ella E. Heady?

A. Yes.

Q. You knew that the Test Oil Company would be benefitted by Sam Bob withdrawing from the north eighty, didn't you?

A. I don't know that I knew that it would. It was the desire of the Company to have that done. I can't say that I knew it would be to the interest—of course,—

Q. Did you know that it was the desire of the company to have Sam Bob withdraw?

A. Yes sir, certainly.

Q. You had all that information in your possession in August, 1906?

A. Certainly.

Q. Wallace Thursday on that occasion told you that the south eighty is equally as valuable both for oil purposes and agricultural purposes as the north eighty?

A. As an independent recollection, I can't say just what
490 he did say, but at the time when that letter was written I
know in reading it over and reading it to Wallace that it was
my understanding that that stated the facts as Wallace stated them
to us.

Q. You will not say now positively, upon your own knowledge
that he did say that the south eighty was as valuable as the north
eighty?

A. If it is contained in that letter.

Q. Did he say it?

A. I am satisfied he said it, yes sir.

Q. Did Wallace Thursday tell you on that occasion that

"The Delokee Oil and Gas Company, a corporation, represented by
Veasey & Rowland, a firm of lawyers here, have been after this land
(the south eighty) all of the time, and while they told Bob they
could win for him the north eighty, they had two other citizens of
the Cherokee Nation file on same?"

A. I answer that in the same way; I don't have any distinct recol-
lection,—it is so if it so states. If those statements are in that letter
he stated them.

Q. Did you know who was filed on the north eighty in this con-
test case?

A. Nothing only hearsay.

Q. Your information in that regard?

A. I understand Sam Bob and Ella E. Heady.

Q. How do you account for this,—?

"And while they told Bob they could win for him the north eighty
acres of land, they had two other citizens of the Cherokee Nation file
on same."

A. I don't know anything about,—I don't know the facts in there.
I don't pretend to know; they were the statements of Wallace Thurs-
day.

Q. In the same connection, the letter goes on to say, "The persons
representing the company, together with Veasey & Rowland, have
been furious since they found out what he was doing, and since that
time they have had from one to four and five people after him all
the time trying to get him to retract the steps taken by him. In
order to do this they had him build a dancing platform on the farm,
and sent one of their parties to Caney, Kansas, to get whiskey, and
the night of the dance I understand they got him drunk and got him
to go with them down to Oklahoma City."

Did Wallace Thursday tell you that?

A. If that is in that letter I suppose that is what he stated.

Q. Did he tell you in any way that Veasey & Rowland assisted in
any way at all in the building of that dancing platform on his place?

A. I answer that in the same way.

Q. Can't you tell me specifically if he stated in this case that either
Mr. Rowland or myself helped build that platform?

A. My recollection is that he stated they contracted with the people to build these things.

Q. That we did assist?

A. That he said you.

Q. Did he also say that he understood we had introduced whiskey from Kansas?

491 A. He said that it was his understanding that you were all interested with them.

Q. Interested with them?

A. Yes.

Q. Is that what he stated?

A. I am not positive as to what his exact words were.

Q. Don't you know as a matter of fact that I was in Washington?

A. No, I didn't know anything about it.

Q. You didn't take the pains to find out?

A. No sir.

Q. You were perfectly willing to write a letter stating these things without knowing anything at all about it?

A. I thought Wallace Thursday was badly used, and I thought if his statement was true you were responsible for a great deal of it, and he wanted us as I understood it to write a letter that would bring about an investigation, and if possible bring the boy back to him. I had nothing against you, not the least thing on earth, except so far as he told me that your conduct with reference to Sam Bob, and in that way branched out to the question, and told me as he understood it.

Q. You knew that if this letter were filed with the Commissioner or with the Secretary of the Interior that it would be a deep reflection on us?

A. I didn't take that into consideration. I think that this is a matter, if these matters are true, that ought to have attention if true, and from his statements that Sam Bob told him they were true.

Q. Did Wallace Thursday tell you he knew these things were true?

A. No sir.

Q. He stated that Sam had told him they were?

A. Yes.

Q. And from this hearsay you were perfectly willing to do all you could to besmirch our reputations?

A. No sir, I did not.

Q. That letter continues this way,

"Where, on a previous journey, before he was 21 years of old, when these same parties had taken him there, and Veasey met them there, they made him acquainted with a prostitute."

Do you recall Wallace Thursday telling you that?

A. I remember he talked about it, and said Sam told him that was true.

Q. That Veasey had met him there and had introduced him to a prostitute?

A. He said substantially those things.

Q. Did he state in terms I introduced him to a prostitute?

A. I don't know.

Q. He would have to say it in terms?

A. He gave the statements in the letter.

Q. Did Wallace Thursday say that Sam Bob said I introduced him to a prostitute in Oklahoma City?

A. He stated that in substance, yes sir.

Q. He would have had to use the word 'prostitute' in terms to create that implication,—that would have been a single sentence that I introduced him to a prostitute?

A. My understanding was from what he said that some member of the party down there introduced him to a prostitute, and that he got that from Sam Bob.

Q. The letter continues,

"Now they have taken him off again, and I understand are keeping him drunk"——

492 Did Wallace tell you that?

A. Yes, he did say that was his understanding.

Q. Did he tell you where that understanding came from?

A. I don't remember that he did state where that understanding came from.

Q. They refer to me as well as Rowland?

A. I understood it referred to the Delokee Company and you, as their attorney.

Q. You didn't happen to know I was in Washington?

A. I didn't know anything about it.

Q. The letter continues,

"They got him to sign some kind of paper, discharging Andy Norwood as his attorney, and re-employ Veasey & Rowland, who are interested in the Delokee Oil & Gas Company, and I think it is a shame and a disgrace that such people are allowed to live in such a community".

What do you think about that?

A. He said that in substance.

Q. You have due respect for other attorneys' reputation?

A. Yes, I think I have.

Q. Where did he first say he had the understanding that Veasey & Rowland were interested in the Delokee Company?

A. I don't recollect anything about that.

Q. Your recollection is very vague in regard to the entire matter?

A. No.

Q. In what respect is your recollection specific?

A. That may be your opinion.

Q. I think the record will demonstrate it.

A. I don't desire to go into a discussion over the matter.

Q. Did you dictate this to Charley Julian?

A. I did not.

Q. It was Charley Julian's composition, was it?

A. Yes.

Q. Charley is the man that said it was "a shame and a disgrace that such people were allowed to live in such a community?"

A. He wrote the letter.

Q. Do you know anything in this community to lead you to think it is a shame and a disgrace for Mr. Rowland and myself to live in this community?

A. Well if you insist on my answering that, Mr. Veasey, why I can do it.

Q. Go on and answer it?

A. I have heard people say that they thought your conduct in this case was very reprehensible,—a number of them.

Q. Who were they, I want every single name, sir?

A. I don't know that I can give you that information.

Q. No, I suppose you can't.

A. Wallace Buford was one of them—I think he was.

Q. Wallace Buford was to get ten per cent of this oil?

A. I don't know.

Q. Wallace Buford is interested in the Test Oil Company, do you now that?

A. I do not.

Q. Name some one else?

A. I don't remember the names of them.

Q. Wallace Buford told you that it was a shame and a disgrace at such people as we should be allowed to live in this community?

A. I don't know that he ever said that.

Q. You are general counsel for the Test Oil Company in this locality?

A. Yes sir.

Q. Have you any knowledge of the connection of Andy Norwood with this matter,—any personal knowledge?

A. No personal knowledge.

Q. You knew Andy Norwood was employed by Sam Bob relinquish his rights in this matter?

A. From hearsay, I might say I did.

Q. Wasn't your partner, Mr. Julian, present when this attempted relinquishment was made?

A. I think he was. I will say I might have been in Muskogee; had gone to South McAlester a few days before this relinquishment matter came up and I came back to Muskogee and was going on a trip to Tablequah. I knew nothing about this transaction when it came up. I stayed all night in Muskogee and went to Tablequah on the freight in the morning and came back on the passenger and stayed there until the train went north. But I didn't know of Norwood nor Sam Bob or any of the parties connected with this matter. I came home and didn't know anything about it personally. I understand Mr. Julian was there in connection with this matter.

Q. In connection with the relinquishment?

A. I don't know what it was.

Q. He was there to look after the interests of the Test Oil Company?

A. To assist in any matter that came up.

By Mr. Hastings:

Q. The effect of your testimony is that Wallace Thursday came to your office and after some considerable conversation, in which he detailed to you the facts and circumstances that had come to him through Sam Bob and others, then that letter was prepared by Mr. Julian upon that information?

A. That was my understanding.

Q. And that letter was taken down to the bank to be witnessed by persons who were in no wise connected with the case?

A. Yes sir.

(Witness dismissed.)

C. C. JULIAN, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. Your name?

A. C. C. Julian.

Q. You are a member of the firm of George & Julian?

A. Yes.

Q. You are attorneys for the Test Oil Company?

A. Yes sir.

Q. You were such on the 23rd day of August, 1906?

A. Yes.

Q. What connection had you had previously with A. H. Norwood in his attempt to have Sam Bob relinquish the north eighty of these lands?

A. None at all.

Q. Were you at Muskogee when that relinquishment was attempted?

A. Yes.

494 Q. What was your business there?

A. Mr. Moran wired me from St. Louis, I think it was, to go to Muskogee. When I got down there I found Andy Norwood and Mr. Thursday and Sam Bob were there and found out what was going to be done. And it was understood before that it, the Test Oil Company, wanted to get a lease on the south eighty. That was my business.

Q. When was that understanding before had?

A. Back some time a week or two.

Q. In connection with whom?

A. Mr. Moran.

Q. Whom did you intend to see in order to bring this about?

A. Nothing was said.

Q. Kept very careful not to say anything about it?

A. No.

Q. You expected to see some one, didn't you?

A. I han't looked into the details.

Q. You and Mr. George expected to represent Sam Bob in this relinquishment?

A. I don't know.

Q. It is true that you and Mr. George handle all the business of the Test Oil Company at this place, and that in handling some of it this matter was discussed about two weeks before this meeting at Muskogee?

A. I have no definite recollection.

Q. Who talked about it?

A. Mr. Moran, I think.

Q. What plan did you think you would use to get a lease on the south eighty?

A. I had developed no plans.

Q. Did you think of any one that could develop the plans?

A. I did not.

Q. Had Mr. Moran thought of any one?

A. If he had, he didn't communicate it to me.

Q. At the expiration of about two weeks nothing had been done toward this relinquishment?

A. I don't know.

Q. Well, was there a consideration agreed upon as to what should be paid Sam Bob for a lease?

A. I can't say that there was at that time.

Q. Was there an amount set aside which should go to the man who would bring it about?

A. I can't say that it was.

Q. You don't know anything about the fund that was for Si Johnson and others?

A. I do not.

Q. Do you know that a fund was set aside for Norwood to play his part in this?

A. I don't know anything about it.

Q. What did you do at Muskogee?

A. Not a thing.

Q. Were you in the land office at all?

A. Yes.

Q. When,—what day?

A. Well, I can't say, it was the middle of the week, I think in July,—the time of the relinquishment, 17, 18 or 19th.

Q. Were you present when Sam first attempted to relinquish the north eighty?

A. I can't say whether I was or not. I was there at two hearings, stayed there.

Q. Were those hearings had one day?

A. He went up there in the forenoon, and then he came back in the afternoon.

Q. You were with him at the time?

A. No sir; I was at the land office.

Q. In the afternoon, did you go with him to the land office?

A. No sir, I was at the land office.

Q. You were in the room when Sam Bob attempted this relinquishment?

A. I can't say, but I think I was,—there in the room or the hallway.

Q. How long did you remain in Muskogee?

A. Left there Friday evening or Saturday evening.

Q. What day of the week was the relinquishment attempted?

A. I have no recollection of the date.

Q. How many days were you there?

495 A. I have no recollection of that, either.

Q. When did Moran join you?

A. I can't say; it was sometime during the middle of the week; might have been the latter part of the week.

Q. You were present in the company of Sam Bob, Si Johnson and Wallace Thursday when Norwood told them that Moran was guarding the money up at the hotel?

A. No.

Q. Do you know anything about the drawing up of this contract?

A. No sir.

Q. You have no personal knowledge?

A. No sir.

Q. You were present when Sam signed the paper dismissing Mr. Rowland and myself as attorneys?

A. I don't remember, I think I was at the land office when the dismissal was tendered the Commissioner.

Q. You don't remember whether you were in the room or not?

A. No sir.

Q. About this letter of the 23rd of August, which I understand is your creation, were you present when Wallace Thursday came into the office?

A. I think I was in the north room, and he came in and talked to Mr. George first.

Q. Then did Mr. George call you into the room?

A. I don't know whether he called me into the room or not.

Q. You got together?

A. Yes sir.

Q. Did Wallace then have his heart-to-heart talk?

A. I don't know what you mean.

Q. Did he talk to you about the matters contained in this letter?

A. Yes sir.

Q. Went over it fully?

A. Yes sir.

Q. All that you know about what Wallace said that day was gained in this conversation in your and Mr. George's presence?

A. That's all.

Q. And you and Mr. George were together at that time?

A. Yes.

Q. Do you recall that Wallace Thursday told you in the presence of Mr. George that the south eighty was as valuable for oil purposes as the north eighty?

A. I think that was his statement.

Q. Don't you know?

A. Yes, if it is in that letter. He signed that letter, didn't he?

Mr. Veasey: Will the Commissioner please see that the witness answers the question?

A. I will stand on my statement,—Wallace Thursday signed the letter. I have no distinct recollection of my own, and you wouldn't know if he made those statements to you ten minutes ago.

Q. Are you willing to state that Wallace Thursday stated all these things to you before this letter was drawn up?

A. Wallace Thursday came into our office about 1:00 o'clock, and we were an hour drawing up that letter and talking to Wallace Thursday.

Q. Then you had a full understanding of all the matter you should put in that letter before it was written?

A. Yes sir. And after the letter was written, we read it over to him and discussed it more. I think Mr. George, after I began to write the letter, went into the south room in his private office, and when it was finished he came in and we read the letter, and Mr. George suggested to Wallace Thursday that if Wallace didn't know these matters personally that he ought to say it is hearsay information.

Q. That is the way that he actually stated it?

496 A. Wallace said he didn't know these matters personally and Mr. George had me interline,—I think interlined.—Is that the original?

Mr. Veasey: Yes sir.

A. Yes sir, that is my handwriting, I wrote "I understand."

Q. Did you have any arrangement with Andy Norwood whereby if Wallace Thursday came into your office that you should perform this service for him?

A. No sir.

Q. You are familiar with the litigation involved in this north eighty?

A. I don't know whether I am or not.

Q. Just two persons have filed on this north eighty?

A. I think that is all.

Q. Do you recall this particular part of that letter, "The Delokee Oil & Gas Company, a corporation, represented by Veasey & Rowland, a firm of lawyers here, have been after this land (the south eighty) all of the time, and while they told Bob they could win for him the north eighty acres of land, they had two other citizens of the Cherokee Nation file on same." What do you understand by that, or what did you understand when you wrote the letter?

A. That question in the letter is somewhat ambiguous; it might refer to the north or south eighty. Wallace said it was the south eighty.

Q. What ambiguities do you refer to there?

A. To a person who knew nothing about the circumstances, he might construe that to mean the north eighty.

Q. Is it not a fact that it specifically states that we filed two persons on the same north eighty acre tract?

A. You will notice that the first clause in the paragraph states with reference to the south eighty.

Q. If you knew nothing about this case, and that question should be submitted to you which eighty would you understand that we had filed two persons on?

A. I would have some doubts, perhaps.

Q. You knew as a matter of fact that we had nothing to do with filing on the north eighty, didn't you?

A. I didn't know that as a matter of fact.

Q. In regard to this dancing platform and the whiskey from Caney, Kansas, did Wallace Thursday tell you that Veasey & Rowland and the Delokee Company built the platform on Sam Bob's eighty, and introduced whiskey from Kansas?

A. I don't know whether he used your name specifically,—he said they, and afterwards referred to you. He didn't refer to Rowland at any time.

Q. Whenever these uncertainties occurred, you were willing to give me the hot end of it?

A. Since I have known you I have — known you to do a disreputable thing, and I bear you no malice whatever, and I was seeking no personal advantage.

Q. Charley, you knew that I didn't introduce whiskey from Caney, Kansas?

A. That might mean fifty people, or only one. If you are guilty, why all right,—if you think you are guilty it is all the same.

Q. I think I can show to your satisfaction——

A. All right, cut loose any time.

Q. Did Wallace Thursday tell you that Veasey introduced Sam Bob to a prostitute in Oklahoma City?

497 A. I have to make some statement. The general conversation was with reference to the Delokee Company, and a part of the time he would use the word 'they' and the letter was so written, and he signed it. It is Wallace Thursday's statement, not mine.

Q. This statement saying it is a shame and a disgrace that such people are allowed to live in such a community,—was that Wallace Thursday's statement?

A. I think he made that statement.

(Witness dismissed).

WALLACE THURSDAY, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. Do you remember testifying before Mr. Bixby some months ago, in the absence of the parties on both sides of this case, at Muskogee?

A. Yes sir.

Q. Do you remember that Mr. Bixby asked you certain questions about a letter which you are supposed to have written to the Indian Agent?

A. Yes, I got a letter from him.

Q. Did Mr. Bixby ask you any questions about this letter we have been talking about?

A. No, not that I know of.

Mr. Bixby: Mr. Veasey is referring to the time you appeared at our office in Muskogee.

By Mr. Veasey:

Q. You did go before Mr. Bixby and answer some questions?

A. Yes sir.

Q. Some questions that you were asked concerning this letter which Mr. Julian wrote?

A. I don't know what that letter was.

Q. Didn't Mr. Julian prepare a letter and send to the Indian Agent at Muskogee and Washington?

A. Yes sir.

Q. When you were before Mr. Bixby he asked you some questions about the letter?

A. He may.

Q. Do you remember whether or not he did?

A. If I can get remembrance I could.

Q. Tell Mr. Bixby how you happened to go to Charley Julian and ask him to write that letter and tell him what you told Mr. Julian,—in your own words?

A. Well, I will tell you, as I told Mr. Julian, I knew nothing personally. I didn't put any facts at all. There was two or three Wallaces in here, and I didn't want to be mixed with any one else.

Q. What did you say,—did you tell Charley Julian that you heard that I introduced Sam to a prostitute in Oklahoma City?

A. No sir, that is something that I knew nothing about.

498 Q. Didn't tell Charley Julian that at all?

A. No sir.

Q. Did you tell Tom George that?

A. No sir.

Q. Did you tell them that you understood that?

A. Yes, I told them that I understood it.

Q. Who told you, Wallace, that I introduced Sam to a prostitute in Oklahoma City?

A. Several talked to me.

Q. Who are they; tell me the names of those people that told you, I want to know them?

A. I guess the ones that told me can tell you.

Q. That's right, put in the name so I can find out?

A. I believe it was Mr. George Norwood; I heard it some other time,—heap of them.

Q. I would like to know the names of those, it is a serious matter with me,—don't you know?

A. When a little talk starts it is like a fire.

Q. You can't remember any one but George?

A. No sir.

Q. About the dancing platform, Wallace, what did you tell Charley Julian about that,—did you tell them that you understood that Veasey & Rowland and the Delokee built it?

A. Well, Rowland has had nothing to do with it.

Q. Did you tell them that Veasey and the Delokee Company?

A. I didn't say you and the Company, I said the Company built the platform.

Q. Do you know the letter which Charley Julian wrote and which you signed states that Veasey & Rowland and the Delokee Company built this platform?

A. No, I Can't say.

Q. Did any one tell you that?

A. No. I told them that a man lived on Cox'- place and I think him and Cox built the platform.

Q. Now, what I am trying to get at is this,—this letter states that Veasey & Rowland and the Delokee Company built a dancing platform on Sam's place, did you hear any one say that?

A. Didn't I just tell you now that Sam and some others built it.

Q. They did? Did you hear any one say that we did it?

A. No sir.

Q. Did you tell Mr. George or Mr. Julian that we did it?

A. I don't recollect.

Q. Would you recollect it if you had said it?

A. I don't know.

Q. The same letter says that 'they', the Delokee Company, and 'they', referring to Veasey & Rowland, got whiskey from Caney, Kansas, got Sam drunk and got him to sign some papers, where did you hear that?

A. That is hearsay.

Q. Did you include Veasey & Rowland in that?

A. I had nothing to do with it.

Q. Did you hear that we introduced whiskey?

A. I didn't hear that you practiced selling whiskey, or not.

Q. Did you hear any one say that Rowland and myself and the Delokee Company brought in whiskey from Caney, Kansas?

A. I heard that they brought whiskey.

Q. Who told you that?

A. I heard it.

Q. Norwood?

A. I don't know whether he was the first person or not.

Q. Norwood told you?

A. Yes. He come to my house,—the first thing I knew Sam was gone,—and they took men, some of the company,—he saw some men going up in the evening first time to the platform. It looks pretty suspiciously.

Q. Do you remember they had somebody around where you

were when Norwood told you,—when he made that communication to you?

499 A. No sir.

Q. Norwood told you about it then?

A. Yes. I don't know whether they made Sam drunk or not.

Q. Norwood said he didn't know?

Mr. Huckelberry: Remember this is your witness, and don't lead him.

By Mr. Veasey:

Q. What did Norwood say, that we made Sam drunk with whiskey from Kansas?

A. He said Sam got drunk and maybe changed back, and I knew it wasn't his intention. That evening he come home,—he had been up to Si Johnson's that evening,—that is the first time,—and I knew he was going up there for something. I says "now, Sam, don't change your mind", and he says "I aint going to". I seen four men passing through my house, going up,—I think it was the pumper and his boys,—going over to the platform to dance.

Q. This letter was read to you, wasn't it, before you signed it?

A. Which?

Q. This letter which Mr. Julian prepared for you and which you signed?

A. What is it.

Q. Do you remember that Mr. Rowland's and my name were mentioned in that?

A. It wasn't read, no name that I heard.

Q. You didn't hear them read our names at all?

A. No,—and I paid no attention,—I put no facts that I knew positive,—just what I heard, because I knowed nothing, I was at home asleep.

By Mr. Hastings:

Q. After Sam was taken away that next morning, there was a great deal of talk about his being taken away?

A. Not next morning,—a couple of days.

Q. There was a good deal of talk about that dance?

A. Yes.

Q. And there was a good deal of talk about members of the Delokee Oil Company being down at that dance?

A. Yes.

Q. And others told you, including Smith and some others that they were drinking, didn't they?

A. Yes sir. I spoke to one of the men who went home, and he says there was no drinking there at all,—Gray, Jim Gray.

Q. I mean Smith?

A. And I asked Smith, and he says yes. He was the floor tender, and he says they was drinking, but he didn't know what they was drinking.

Q. Smith was part owner of that platform?

A. Yes sir.

Q. You heard it from other sources, didn't you?

A. Yes sir.

Q. A good deal of talk about it around town?

A. Yes.

Q. A good deal of talk about Sam going away?

A. Yes.

Q. You were making inquiry as to where he was?

A. Yes.

Q. You were wanting to get him back?

A. Yes.

Q. You didn't know where he had gone?

A. No. Well, he told me he was going to Oklahoma and would be back in three days.

Q. You tried to find out his whereabouts?

A. Yes sir.

Q. Tried to find out where he was gone?

A. Yes sir.

500 Q. During this time, you found out these things, the substance of which was stated in this letter?

A. Yes, sir.

Q. You stated these things in that letter upon what you had been told?

A. Nothing I knewed personally.

Q. You didn't claim to know it personally?

A. No, sir.

Q. From different people, you made these statements in that letter?

A. Yes, sir.

Q. You intended to make these statements against the representatives of the Delokee Company?

A. Yes.

Q. They were the ones behind it?

A. Yes, sir.

Q. You charged them with being down at the dance?

A. Yes.

Q. You saw four of them going through your lot?

A. Yes.

Q. You heard that they were down there?

A. Yes.

Q. You heard Smith and others say they were drinking?

A. Yes.

Q. You heard that some of them went off with Sam Bob to Oklahoma City?

A. Yes, sir.

Q. Now you had some suspicion that the Delokee Company was trying to get hold of Sam Bob and try to get him to make some changes in what he had done in July at Muskogee?

A. When they come and told me he was gone, they said the dance — what turned him.

Q. The day before you talked to him about not making changes?

A. That was the night of the dance.

Q. That was after he had been to the dance that night and he come back home?

A. Yes, sir.

Q. To get some clothes?

A. Yes, sir.

Q. He told you he was going away?

A. Yes, sir.

Q. Who with?

A. Harned and Si Johnson.

Q. You knew Harned was a member of the Delokee Company?

A. Yes.

Q. You advised him not to make any changes?

A. That was the evening before he went to the dance.

Q. He told you he wasn't going to do it?

A. Yes.

Q. When did you find out that he had made some changes, re-instating the firm of Veasey & Rowland?

A. About Veasey & Rowland?

Q. To reinstate them as attorneys for him, that next morning about 4:00 o'clock in the morning, when Sam signed some papers up there, you heard that?

A. Yes.

Q. How long after Sam had gone to Oklahoma City?

A. Oh, it was about the same time that Mr. Norwood come down here to the house.

Q. And a few days thereafter?

A. Four or five.

Q. You didn't know exactly what they were drinking, but you were told they had been drinking down there at that dancing platform and you supposed it was whiskey?

A. I didn't know what they were drinking down there, but that is what Smith said,—he said they were drinking, and drinking something he didn't know what it was.

Q. Did Sam tell you he had a girl in Arkansas City?

A. Yes.

Q. He showed you the picture in his watch?

A. I seen the picture.

Q. What did he say about her?

A. He was going with her.

Q. You say that Norwood and numbers of others told you about that statement about whiskey?

A. Yes, sir.

Q. It was the general talk around the town?

A. Yes, different towns, too.

Q. And in talking up there with Mr. George and Julian you didn't mention the name of Rowland?

A. No.

Q. Other representatives, including Mr. Veasey, were talked over there in connection with the matter wasn't they that the Delokee Company and its attorney had had something to do with the taking of Sam away?

A. Yes, of course, that was talked over. Any man walking around town could hear that,—hear it everywhere.

501 By Mr. Veasey:

Q. Don't you know as a matter of fact that I was in Washington when Sam signed these papers, just before he went away,—did you know I was away from town?

A. Yes, I knew it at the time Sam signed the last papers, I think you were not here. I don't know where you were because I ain't seen you in three or four months.

Q. Did you ever hear any one else say that Mr. Rowland and Veasey were down at that dancing platform?

A. Could you have been there and in Washington?—No, I don't believe Mr. Rowland dances, but I couldn't tell you whether he was there or not.

Q. How about my dancing?

A. I don't know.

Q. Did you hear that I was down at the platform that night?

A. Why, I just now told you that you couldn't be at the platform and in Washington, too.

Q. I want to know if any one told you I was there?

A. If you were not here, how could you be there?

Q. Was Sam under the influence of liquor when he came home that night?

A. You can't tell when he is, only he steps a little quicker when he is drinking than when he ain't.

Q. Was that these papers Norwood got away from you when he came back?

A. Didn't get them;—I told him I didn't want to change them.

Q. You didn't have them with you?

A. No, sir.

Q. Wallace, do you remember signing a paper at Nowata with Mr. Harnage in a law office there about a year and a half ago?

A. Yes, sir.

Q. You have a copy of that paper?

A. Yes, sir.

Q. Have it with you?

A. No, sir.

Q. What did that paper state, if you know Wallace, do you know what that contract provided for?

Mr. Huckelberry: The contract would be the best evidence.

Mr. Bixby: For what purpose do you want to examine him?

Mr. Veasey: Simply, that he understood it was our purpose to protect both the interests of Sam Bob and Wallace Thursday in that eighty.

Mr. Bixby: All right.

By Mr. Veasey:

Q. Do you know what that contract provided?

A. Yes, I knew that what you wrote; he said he didn't know what you wrote was so.

Q. What did I write, Wallace?

A. You said that I should have the land as long as I lived and one well of oil or gas on the place.

Q. That is one of the things I wrote was it?

A. Yes.

Q. Did that contract say anything about Harnage withdrawing from the south eighty in the event you won your citizenship?

A. Yes.

Q. Did the contract also provide that in case Sam lost the north eighty, Harnage was to withdraw from the south eighty?

A. Yes, he knew that.

Q. You don't know whether that contract provided that or not?

502 A. It looks reasonable that the land belongs to him and his Graney, that he ought to have his allotment.

Q. Didn't I explain to you when that contract was drawn up that if you established your citizenship that Harnage was to withdraw from the south eighty and let you take it?

A. Yes.

Q. In case Sam lost the north eighty, didn't I explain to you that Harnage was to withdraw and let him file on the south eighty?

A. Well, that is a new contract.

By Mr. Hastings:

Q. How much has the Delokee Company paid you?

A. For what?

Q. For leases on any of this 320 acres, including your wife's, yourself and Sam Bob's?

A. What do you mean, out of the oil.

Q. Have they paid you any money as a bonus?

A. Not a cent.

Q. Did you agree to pay Mr. Veasey's try to Washington, and the expense of this litigation, witness fees or anything else?

A. No, sir, I did not.

Q. Have you ever agreed to pay anything to the Delokee Company that they have expended for or on behalf of this contest?

A. That was a contract that they was to do free of charge.

Q. They was to pay all expenses incident to this?

A. Yes, sir.

Q. Then, if they have rendered a statement here against you that they have paid you both in money and services \$570.00, do you consent to it?

A. What sort of services?

Q. Referred to in the contest, (Contestee's Exhibit F), here is a statement, Wallace, against you by the Delokee Company, according to which they have expended for you about \$570.00, is that correct?

A. No, sir.

Q. They have got on June 23, 1903, you charged up with filing at Tahlequah, and surveying to the amount of \$65.00; that was evidently your trip to Tahlequah; did you agree to pay the Delokee Company this \$65.00?

A. No, sir.

Q. Did you tell them to charge that up to you?

A. No, sir.

Q. Did you know it was charged up to you?

A. No, sir.

Q. On the 29th day of July, 1903, they have got "Cash paid Wallace Thursday \$200.00; who got that \$200.00?

A. I don't know anything about it; they didn't give it to me.

Q. You never got that \$200.00?

A. No, sir.

Q. You got no part of that \$200.00?

A. No, sir.

Q. Did you know they had it charged against you?

A. No, sir.

Q. On May 26, 1903, they have charged to Wallace Thursday \$25.00, do you remember anything about that?

A. Not me.

Q. May 26, 1904?

A. Yes, I think I got that; Sam wanted to buy some clothes.

Q. On December 24, 1903, they have charged you up cash paid Wallace Thursday \$100.00; did they pay you that?

A. How long ago has that been?

Q. Pretty nearly three years ago,—December, 1903, this is November. \$100.00 cash paid you?

A. I don't know anything about it.

Q. They have you charged up on the 23rd day of May, 1903, "Expense of Dr. Wyatt to Nowata in hearing Mary Thursday case, \$25.00;" do you know anything about that charge?

503 A. I think that was their business; I had no talk with Mr. Wyatt, or anything of the kind.

Q. On April 20, 1905, they have got you charged up, paid W. T. Hutchings, a lawyer at Muskogee, for Wallace \$15.00, did you tell them to pay Hutchings the sum of \$15.00 for you?

A. Mr. Hutchings?

Q. Yes?

A. No, I don't recollect anything of telling them to pay Mr. Hutchings anything,—what was it for?

Q. This statement doesn't state.—And on several other occasions they have you charged up with five, and ten dollars cash paid to you; how much cash have they ever paid you, all told, if any, on this land?

A. Paid me nothing on the land.

Q. Not a cent?

A. Not a dollar.

Q. Do you owe them \$570.00 on that,—are they entitled to charge you \$570.00 for money and expenses and lawyer's fees and things of that kind upon that land, and you not know that you are charged up with it?

A. No, I didn't know it.

Q. Have they ever paid you any bonus as guardian of Mary Thursday, your wife?

A. Never paid that.

Q. Are they due some on it?

A. Bonus on the oil?

Q. Bonus?

A. Oh, no, they paid nothing on that.

Q. Have they paid you a cent bonus on anything?

A. No, they have never named,—I talked to Mr. Veasey several times about that.

Q. Now, Wallace, they have rendered on account of \$2,260.64 here against Sam Bob part of which is before Sam became of age—

Mr. Veasey: Now, if the Commissioner please, that is not fair; we are not charging that against Sam Bob. We are attempting to show the expenses incurred by the Delokee Company; that was our purpose in introducing that,—not a cent of it is held against Sam Bob.

Mr. Hastings: Why is it in the statement then filed as Contestee's Exhibit F. When your bookkeeper went upon the stand here you had a total of \$695.50 charged against Wallace Thursday, now if it was not going to be charged against Wallace Thursday, why did you instruct your bookkeeper to deduct items aggregating \$125.50 from this \$695.50, so as to leave a balance chargeable against Wallace Thursday of \$570.00?

Mr. Veasey: The purpose was to show that we have paid bonus due on the Mary Thursday allotment, and we have the checks for money and goods.

Mr. Hastings: You have then charged him with the \$570.00?

Mr. Veasey: We have charged the lease of Mary Thursday.

Mr. Hastings: You regard yourself under oath in these examinations?

504 Mr. Veasey: Why, certainly.

By Mr. Hastings:

Q. Did you know that your account as guardian of Mary Thursday was charged up with \$570.00, as against the bonus that they owed you?

A. I didn't know anything about that.

Mr. Veasey: I want you to understand that \$2,200.00 is simply expense the Company has been to; that is not charged against any one.—I want you to understand that.

Q. Now Wallace, do you remember appearing before the court at Nowata when you were appointed guardian of Mary Thursday, and the question arising as to the \$200.00 that had been paid you for a lease on her allotment?

A. Yes, but then you all had not paid it.

Q. What became of the check for \$200.00 given you in James Gray's store?

A. He didn't give it to me; put it in the bank.

Q. He didn't give you a check on the Bartlesville National Bank for \$200.00,—deposited same to your credit in the Bartlesville National Bank?

A. I didn't get it. He put it in there for sometime. I asked Mr. Booker, and he wouldn't talk about that, he says I'll hunt it up.

Q. In Booker's bank?

A. Yes, that is where Jim Gray,—that is up the street.

Q. At any time previous to that charge, did the Delokee Company give you \$45.00 of this, before you filed?

A. I don't know anything about before I filed.

Q. Just to refresh your memory, that \$15.00 on your citizenship claim?

A. No, that is something I don't know anything about. That \$15.00, first I heard of it is today.

By Mr. Hastings:

Q. If this \$200.00 was paid to Woodward, that wasn't to be charged against you, was it,—you wasn't to be charged with the \$200.00, were you?

A. I don't know, I think,—

Mr. Veasey: The only purpose to show that list of expenses was to show that we had paid \$500.00 bonus on Mary Thursday's allotment; if we can show that we will withdraw that item.

By Mr. Bixby:

Q. You have got some money in a bank here in Bartlesville?

A. Yes, sir.

505 Q. How much?

A. I just don't know how much.

Q. What bank is it in?

A. First National Bank, down there on the corner.

Q. It was originally about \$2,700.00, was it?

A. Yes sir.

Q. Where did you get that money in the first place?

A. Moran.

Q. Test Oil Company representative?

A. Yes sir.

Q. Who does that money belong to?

A. It belongs to me I guess; it is in my name.

Q. Did you always claim it belonged to you?

A. Ever since they come down and said it was my money.

Q. How long have you considered it your money?

A. Not quite a month.

Q. Up to about a month ago whose money did you think it was?

A. I was aiming to hold it until this contest was over, but it run along so long that I just concluded that it was not necessary to hold something on dead expense and I better use it in some shape.

Q. Up to a month ago who did you think the money belonged to?

A. I thought it belonged to the boy and old lady.

Q. Sam Bob and Mary Thursday?

A. Yes sir.

Q. Now you think it belongs to you?

A. They said it was my money and I guess it is mine.

Q. Who said it was your money?

A. Mr. Heady.

Q. How much is there in the bank?

A. I don't know just how much.

Q. Why don't you know?

A. There has been included five hundred dollars of my own money, and there is one hundred dollars payment money, and this last settlement, and there is the royalty.

Q. How much of this original \$2,700.00 did Moran give you?

A. \$300.00.

Q. Did you draw out of it \$400.00?

A. Yes sir.

Q. Draw it out on check?

A. I don't recollect whether it was check or just paid it out cash.

Q. You had to give a check to get it?

A. Yes, I signed the check.

Q. You have taken out about \$400.00?

A. Yes sir.

Q. What did you do with that money?

A. Bought a team and wagon.

Q. Took it and used it for yourself?

A. Yes, used it for the family.

Q. Did you use any of it for Sam Bob?

A. Not yet.

Q. You spent that \$400.00?

A. Lots of it lying there yet.

Q. What did you do with that \$400.00?

A. Bought a wagon, horse and couple of cows.

Q. All for your own use?

A. No, I can't use them for myself when I have a family—for Sam, myself and the old woman, all for us.

(Witness excused.)

HOWARD WEBBER, being first duly sworn by Commissioner Bixby testified as follows on behalf of the Contestant:

Examination.

506 By Mr. Huckelberry:

Q. What is your name?

A. Howard Webber.

Q. What is your post-office?

A. Bartlesville.

Q. What business are you in?

A. Oil and gas producing business.

Q. State what experience you have had in this business?

A. I had experience previous to coming to the Territory; about 20 experience in Pennsylvania and Ohio.

Q. As a practical producer?

A. Not as much so as in this field. Always had interests in wells but not the active management of wells.

Q. You are both contracting and drilling here, are you?

A. Yes sir.

Q. Are you familiar with the situation of the oil lands around Bartlesville, and especially to the south of Bartlesville?

A. Generally, I am.

Q. I will ask you if you are familiar with the wells as have been drilled on what is known as the McDaniel eighty south of town?

A. I am familiar by conversation with the parties that own the wells.

Q. You have information in regard to the wells drilled in south of town?

A. Yes sir.

Q. Have you done some drilling south of town yourself?

A. Yes sir, I have drilled a number of wells.

Q. I will show you a plat which has been prepared by J. E. Hickey, surveyor, showing Bartlesville and the country south; I will ask you also if you are familiar with the wells which have been drilled to the south east corner of what has been termed the south eighty?

A. Yes sir.

Q. What are the character of those wells that have been drilled in there?

A. Those wells are better than the average of the field.

Q. Are you familiar with the wells which have been drilled by Markham in the McCaleb Addition?

A. Yes sir.

Q. What kind are those?

A. Better than the average.

Q. Are you familiar with those that have been drilled on the Mary Thursday allotment?

A. Yes sir.

Q. I will ask you to look at that map and see if the wells shown thereon are correct?

A. Yes sir, they look the same as the rigs on the field, as near as you could tell.

Q. Now, when I speak of the north eighty it is a term that we have applied to the land in controversy, which is the eighty immediately south of the land of McDaniel's eighty and the south eighty is the eighty immediately south of that eighty?

A. Yes sir.

Q. I will ask you to give us your judgment as to which of these two eighties are more valuable from an oil standpoint, the north or the south eighty?

A. The south eighty is more valuable.

Q. Which in your opinion would a lease of which *would* command a greater bonus;—a lease of the north eighty or a lease of the south eighty?

A. I would give a greater bonus for a lease of the south eighty.

Q. How much greater?

A. I would give 25 per cent more.

Q. What effect has it, in your opinion, the McDaniel wells being located within a short distance of the north line of the north eighty and having been drilled for some two years had upon the north eighty as an oil proposition?

A. Why, it has taken the flush production off of at least half

of the north eighty and decreased its value as oil proposition probably 25 per cent.

507 Q. About what would be in your opinion a reasonable bonus on the north eighty at the present time?

A. Well, that depends; some people pay higher bonuses than others, but I should judge that under the circumstances the north eighty should command about \$75.00 an acre bonus, and the south would command \$100.

Q. What effect would it have upon the value of the north eighty if it were divided into four 20-acre tracts as follows: if the north 20 acres of the east forty, and the south 20 acres of the west forty should be given to Sam Bob, and the north 20 acres of the west forty and the south 20 acres of the east forty given to Ella E. Heady, would the division of the land in such a way have any effect upon its value as an oil proposition?

A. Why, in the first place, dividing the territory into 20 acre tracts would lower the value and lower the bonus, for the reason that it would require more money to operate it. You would have to put more wells on four 20 acre tracts than you would on an eighty acre tract. The north east 20, besides being drained by the wells, is already in operation and it is a question whether the east portion is very productive; the south west 20 is drained by the drilling on the west and that would probably take the flush off of one-third of it, so that practically there would only be two-thirds of the south west 20 that you could consider flush territory, while in the north west twenty there would be half of that taken off of the flush this way (west and north). And the entire 20 east, the south west 20, that would make the flush production, and under those circumstances, I would consider the south east twenty and the north west twenty worth twice as much as the north east twenty and the south west twenty.

Q. Now as a bonus proposition how much less would that eighty acre tract bring if cut up into twenty acre tracts than if sold as a whole?

A. Not more than forty or fifty dollars an acre.

Q. From your judgment of the lay, that is of the wells and the drilling in the neighborhood of the lands in question what is the trend of the oil there, I mean of that individual pool?

A. Well there is no trend to it; that is a pool, and in my judgment that is the edge of it (referring to the north east corner of the north eighty) and this eighty lays more to the center of it (referring to the south 80).

Q. Which is the more valuable?

A. That which lays in the heart of the pool.

Q. Is that the reason you give for preferring the south 80?

A. Yes sir.

Q. Have you any interest in this matter at all?

A. No sir.

Q. Are you related to Mrs. Heady?

A. No sir.

Q. Interested in any way in the Test Oil Company?

A. No sir.

By Mr. Veasey:

Q. Have you drilled any wells for the Test Oil Company?

A. No sir.

Q. Have you any personal knowledge of the capacity of the wells around this land?

A. Yes sir; I have personal knowledge of the capacity here, the wells on the north west known as the Markham wells, and the wells on the south east I have personal knowledge of all those wells.

Q. Have you personal knowledge of the capacity of the McDaniel wells?

A. No sir.

508 Q. Have you personal knowledge of the Lannom wells.

A. From what he told me, is all.

Q. Have you personal knowledge of the wells to the south west of the south eighty on the Lannom tract?

A. Just a general knowledge, when the wells were first shot.

Q. Have you a personal knowledge of the wells south of the south eighty?

A. No sir.

Q. If the lease manager of Mr. Markham testified, who is drilling the land immediately south of the south eighty, testifies that a well within 152 feet of the south line of the south eighty and east of the railroad came in doing between 10 and 25 barrels, and that an oil well indicated on the plat as being 476 feet south of the south line of the south 80 and west of the railroad, came in at substantially the same capacity and Mr. Lannom testified, who owns the land to the west of the land in controversy, that a well 131 feet south west of the south west corner of the south eighty came in doing 10 barrels a day, and Markham's manager testified that a well within 220 feet of the south east corner of the south eighty came in doing between 10 and 25 barrels, what in your judgment, does that indicate with reference to the oil value of the south eighty, supposing that that has been testified to?

A. It simply indicates that the south eighty is entirely within the oil bearing area.

Q. Does it indicate that the oil sand at the places where those wells were drilled was thin or otherwise?

A. It might indicate that the sand was thin, and it might indicate that the sand was a little hard.

Q. What indications do you regard as more valuable in determining upon an oil proposition, the presence of wells of large capacity or of small capacity in the neighborhood of the land?

A. I consider the general formation, the regular formation.

Q. Don't you know, as a matter of fact, that oil men regard large wells as indicating a greater value for land than the presence of small wells within the same distance of the land in question?

A. Yes sir, a lot of large wells.

Q. What do you mean by a lot of large wells?

A. I mean large wells over a large area, but one large well and several small wells is not as valuable as an entire lease drilled up with average wells.

Q. Is there any large well drilled in near this south eighty that you know of?

A. No sir, not real close to it.

Q. As a matter of fact the closest wells to the south eighty are small wells, if the testimony of Markham's manager and Lennom is true?

A. I don't know a thing about that personally.

Q. Do you know anything personally about the production of the McDaniel wells, the initial capacity of those wells?

A. Only what Mr. Booker said.

Q. Mr. Booker has testified that the well which is shown to be the third one east of the railroad had an initial capacity of 250 barrels, that the well next to that toward the railroad had an initial capacity of 150 barrels; that the one next to the railroad had an initial capacity of 75 barrels; that the well east of the first one indicated had a capacity of 25 barrels, and the one still east of that 25 barrels; that those wells were drilled in at an interval between two years and one year ago. The Manager of Mr. Markham who was drilling the McCaleb tract has testified that about 60 feet north west of the north west corner of the north eighty was drilled in doing 50 or 55 barrels, and after eighteen months was still doing 50 barrels. Mr. Lannom, has testified that the wells which

509 I point out, being the north well on the Zora Lannom tract, was drilled in at between forty and fifty barrels, and the one south of that was larger, 60 to 75, and the one south of that came in about 100 natural, and has not yet been shot; do you mean to state here, being an oil man, in the light of what I have just told you, what the testimony showed, that you regard the north eighty of less value than the south eighty for oil purposes?

A. Yes sir.

Q. Why?

A. Because the wells here have taken out one-third of the oil in the north eighty (referring to the wells along the north and west side of the north eighty).

Q. It is because of the drainage, then, and not because of the nature of the oil sand that induced you to that belief.

A. It is both.

Q. Now explain why you should say that wells of a large capacity with reference to one tract of land, and wells of a smaller capacity with reference to another do not constitute a difference?

A. In the first place it is evidence that the east end isn't productive oil land (referring to the east side). Now to the north west there is a number of drainage wells and every now and then a large well. The same condition is true on the south east of the south eighty. You will find a number of large wells and a number of average wells. The same condition here (on the south west); practically on three sides of this 160 acres of land you will find that condition. Now, you have every reason, since that is the character of the sand here on the south east, on the north west and on the south west, you have the same reasons and on that I base my esti-

mate that you will get larger and more average wells on the south eighty, and the further fact that the south eighty is not drained.

Q. What is the average distance between the location of wells in this country,—what is the usual distance?

A. The ruling is they shall be 150 feet.

Q. I don't mean from the boundary?

A. They put them from 468 to 510 feet.

Q. Why is that distance observed?

A. It is simply customary.

Q. Is it, that if you put a well 500 feet that will drain the oil within 250 or 300 feet of it?

A. If the sand is loose and the oil comes easy, but if it is tight then they have to put them closer together.

Q. They locate their wells so as to enable the several wells to drain all the property, and if they drill one well 500 feet from another, does not it occur to your mind that the man who drills that well believes the wells will drain over 250 feet?

A. Well, I take 160 acres like that and I drill the corner location, and if I decide to drill four more wells I put them 468 feet apart. This first one is 150 feet from the line, and the next one is 468, and so on; and if I put three I have them 510 feet apart.

Q. The purpose of the location of wells at particular points is to get as much drainage as possible at that particular point?

A. The purpose in this territory is usually what you have got to contend with on the other side, they offsetting. If the man on the other side is going 510 feet you will be apt to go 510 feet, and if he is going 468 feet you will be very apt to go about the same.

Q. Is it your practice to drill wells to from 468 to 510 feet apart, why couldn't the wells on the north eighty be drilled from such distance as the wells they are offsetting?

A. They could.

510 Q. Then in your judgment, is there any drainage on the point where those wells are put?

A. There is drainage in there; half way in, six or seven hundred feet, because there is a pool of oil with gas in it, and as quick as you begin to take oil out of one point everything tends to flow to that point and if the sand is loose it flows faster, and so in time the loose sand, with those wells around it, within six or seven years it would drain that entire eighty acre tract so that you could hardly drill wells in that that would pay for themselves.

Q. Mr. Booker has testified that this row of wells on the north of the north eighty, one was drilled two years and two months ago, and the others were drilled in within an interval of a year and a half, now what would be the effect of those wells upon the north eighty and within the time that I mentioned?

A. They would take out close to one-fourth of the value of the oil in the amount that they would drain,—that they would take out about one-fourth of the value (referring to the north eighty.)

Q. Then do you attach any importance to the wells on the west?

A. They would drain just the same that way.

Q. Then the two together would drain more than a fourth, I am

trying to get at whether you think the north wells alone would drain one-fourth of the property within the time they have been in there?

A. They would drain one-fourth the way down; about as far as you would notice any particular effect would be about six hundred feet.

Q. How far in your judgment do you think they would drain?

A. You would find six hundred feet from the wells, between six and seven hundred feet from the wells, you would find a decided evidence of drainage if you drilled.

Q. And the same would be true of the wells to the west?

A. Yes sir.

Q. Now, you are drilling up here in the Webber pool?

A. Yes.

Q. The land is particularly porous up there?

A. We consider it a medium sand; it isn't a real tight sand.

Q. Are you familiar with the said around the north eighty referred to here?

A. Not to the sand of those wells, but on the wells in the same sand in the same neighborhood.

Q. How does — compare with your Dewey pool sand?

A. It isn't the same amount of sand, and the sand is looser. The wells show better natural than our wells there.

Q. If an attempt were made to offset the wells drilled in on the north at a distance of 150 feet south of the north line, which would make those wells about 230 feet from the McDaniel wells, what in your judgment would be the probable production of those wells as compared with the present production of the McDaniel wells?

A. The probabilities are it would take about four wells of them to produce as much oil as the McDaniel wells, and after you drilled those wells, the McDaniel well would fall off about one-half, that is, this well you offset would be probably about one-fourth more, its initial production, then the production of the well along the McDaniel line at the present time.

Q. Now, my point is this, if one of those McDaniel wells is doing about 75 barrels which come in 250 barrels, say that you had drilled an offsetting well within 230 feet of that, what would be the probable production of that offsetting well?

A. Both wells would be about fifty barrels apiece.

Q. Then, if these five wells as testified by Mr. Booker, are producing in the aggregate 225 barrels offsetting wells drilled
511 within the distance I indicated, would in your judgment come in doing, how many barrels?

A. They would probably come in and start off at about the same, doing 225 in the aggregate, but they would not stay there very long, and they would pretty near divide up that production, probably the two sets of wells, would do about 560 barrels.

By Mr. Huckelberry: Let him take his time to think; it is clearly a mistake.

Q. Have you an explanation to make of that, Doctor?

A. I can explain my reasons.

Q. Were those the facts you meant to state?

A. Yes sir.

Q. Now what you have said with reference to the wells along the north hold substantially true of the wells along the west?

A. Yes sir.

Q. And you regard the land all of the north eighty, excepting within a radius of six hundred feet of the McDaniel wells as being free from drainage?

A. How is that?

Q. I gather from your testimony that you consider that that part of the north eighty excepting such as is within the six hundred feet of the Lannom wells and McDaniel wells as being free from drainage?

A. I say it would show decided drainage that far, and of course it would extend on but you can not say how far.

Q. How do you distinguish decided drainage and ordinary drainage?

A. Well, suppose that well started at 250 barrels, and I drill a well here and it started off at 125 barrels, I would decide that that was a decided drainage, and then go on down and drill another well of 200 barrels, I would decide that was considerable drainage, and then go on down and get another well with the same capacity as there I would decide that it had not affected that well.

Q. Is it possible in your opinion for five wells to be drilled in within 150 feet of the north line of the north eighty doing in the aggregate 250 barrels, and four wells have been drilled in near the line of the south eighty, the four nearest wells doing less than 75 barrels, or at least less than 100 barrels, and that was their original production, explain to me why you think that the south eighty is more valuable than the north eighty for oil purposes?

A. Because I expect to get some wells like they got on the south-east and north west.

Q. Why do you expect that?

A. Because according to the territory, there wasn't any tracts of land of that size but what they got that large a well.

Q. That is pure speculation?

A. Well the whole is merely from experience and location.

Q. Then you don't regard the actual operation in the immediate vicinity of the land as being actually the sole test of the value for oil purposes?

A. Not the sole test, no sir.

By Mr. Huckelberry:

Q. I want to call your attention to the answer to a question you made awhile ago. Now I will ask you, that if these wells were doing 225 barrels and you drilled off-setting wells which as you say would start off at about 225 barrels or a little more perhaps, that would make a total at the time of the drilling of the second wells of 450 barrels. Now what would they settle down?

A. I made a mistake in my former testimony: They would settle down to 225, plus 100 barrels, which would make 325 barrels.

Q. I will ask you—there was some reference made by Mr. Veasey to the Webber field,—are you connected with that?

A. Yes sir.

Q. Who started that?

A. I opened that field.

Q. You drilled the first well there?

A. Yes sir.

Q. And it is named after you?

A. Yes sir.

Q. What is the size of the pool, compared with other pools in the Cherokee Nation?

A. That pool has the largest number of large wells of any pool in the north part of the Cherokee Nation, because of the regularity of the tract.

Q. Can you tell us about how much daily production you are interest- in in this field?

A. About 3,500 to 4,000 barrels a day.

By Mr. Veasey:

Q. How long have you been in the oil business in a practical way, that is actually superintending operations?

A. Three and one-half years in this field here.

Q. Have you ever been so engaged in any other field?—In over- looking and superintending oil operations?

A. Not the supervision of it.

Q. You have had three and a half years experience?

A. Yes.

By Mr. Huckelberry:

Q. How long have you been interested as an oil producer?

A. About twenty years.

(Witness excused.)

HOWARD McMANN, being first duly sworn by Commissioner Bixby, testified as follows for Contestant:

Examination.

By Mr. Huckelberry:

Q. What is your name?

A. Howard McMann.

Q. Your residence?

A. Bartlesville, Indian Territory.

Q. What is your business?

A. Contractor and producer of oil.

Q. How long have you been in the oil business?

A. About in the neighborhood of 25 years, in the drilling busi-
ness.

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Q. You have been during all that time actually engaged in the oil producing business?

A. Yes sir, contracting and producing.

Q. Are you acquainted with the condition of the oil fields here around Bartlesville?

A. Yes sir.

Q. How long have you resided in Bartlesville?

A. I have been here four years the 9th of last October.

513 Q. Have you been drilling around and about Bartlesville?

A. Yes sir.

Q. How many wells have you probably drilled in the vicinity of Bartlesville?

A. I think I have drilled probably 100 wells, 110.

Q. In the vicinity of Bartlesville here?

A. Yes sir.

Q. Are you acquainted with what is known as the McDaniel 80 south of town?

A. Yes sir, I have been on it a portion of it and know where it lays.

Q. Did you drill any of those wells?

A. No sir.

Q. Have you drilled any in that neighborhood?

A. I have drilled north of the McDaniel tract and have drilled west of it.

Q. For whom did you drill that?

A. The Cudahy Oil Company and North for them.

Q. Have you drilled any south and south east of it?

A. I have drilled a gas well east of it, and south east I have drilled oil wells.

Q. Have you drilled oil wells on the 40 acres in the south east corner of this plat being on the Johnson and Steven Miller tract?

A. Yes sir.

Q. Are you familiar also with the wells on the McCaleb addition—known as the Markham wells?

A. No, nothing only hearsay when they were drilled in. Of course my business was there, but I have drilled wells west of them.

Q. Well, have you a general knowledge of those wells?

A. Well, yes, I know of them.

Q. How many wells have you drilled on this south east forty, shown on the map, do you remember?

A. Well, I have drilled ten wells in there.

Q. From your experience and knowledge of the land in contest, being the north eighty, and the eighty acres immediately south of it, which we call the south eighty, which in your opinion is the more valuable for oil purposes at the present time the north eighty or the south eighty?

A. Well, so far as my judgment would be, I would not consider any difference at the present time.

Q. What do you figure as to the likelihood of oil being found on the south eighty when drilled?

A. Well, I think that there is more chances to get a fair production on the south eighty than there is on the north for the reason that the north has been drained and the south has never been drilled on any, but of course, I figure that the south part of the north eighty would be far better, something like the south eighty now.

Q. What are the character of the wells that you have drilled on the south east forty,—are they large or small wells?

A. Well, some of them are very nice wells, started any way from 50 barrels to 150, and 175, along there.

Q. What were the character of the Markham wells on the north-west corner?

A. I think they started off something like 200 barrels.

Q. I call your attention to the three wells, beginning with the south well of the Lannom tract laying towards the south west corner of the north eighty, under some testimony, that well was 100 barrels natural, never having been shot. I will ask you what weight, if any, that well would have upon your valuation for oil purposes for the south eighty, that being the best well of the Lannom wells, the north one being 80 barrels, and the second one a little better, and this one 100 natural?

A. I think that makes the south eighty, just as good as the south part of the north eighty.

Q. And you think the south part of the north eighty is the best part of that eighty?

A. Yes sir.

514 Q. Now, in regard to the value of the north eighty, suppose it there divided into twenty acre tracts, would it be so valuable for oil purposes in that way as a whole?

A. No sir, I don't think so.

Q. Why not?

A. Well if it is divided up into small tracts, it costs so much more to drill it, that the average oil man could not make much money out of it.

Q. It also costs more for boring?

A. Yes sir.

Q. Under the present prices of oil, what in your judgment as a producer of and a driller of oil, what would have to be the production of a paying well?

A. Fifty barrel well.

Q. Now if these twenty acre tracts that I call your attention to, leases of those 20 acre tracts, should fall into adverse interests would it not make it especially costly to the man who was producing oil on them?

A. Yes sir.

By Mr. Veasey:

Q. If such a division occurred they would have to institute different plans?

A. Yes sir, of course, that is, * * * when we first began to drill I might make arrangements with my neighbor if I was on good terms with him.

Q. And owing to a division of the property in the way that has been suggested to you it would require that more off-setting wells would have to be drilled?

A. Yes sir, that is on the small tracts.

Q. Now do you know anything personally about the production of this surrounding property?

A. Not personally, I don't know anything only hearsay, about those wells here (the wells on the north and west).

Q. Which do you regard the best indication of the value of oil property, the presence near the boundaries of that property of large producing wells, or the presence near that property of wells of small capacity?

A. Well, of course, large wells would make the property more valuable, but if the large wells were drilled up against the property, why it deteriorates the value of this (referring to the contiguous land).

Q. Now regardless of the drainage, answer my question? If there were five wells of comparative large capacity near a tract of land, and four wells of small capacity near another tract of land, near the boundary practically the same distance of these two tracts, which of those two would you say was the more valuable regardless of the drainage.

A. I would say the large well.

Q. You say you have drilled some wells to the south east of the south eighty?

A. Yes sir.

Q. As a contractor or of your own wells?

A. Contractor.

Q. Who owns those wells?

A. Mr. Johnson.

Q. Do you know whether or not Mr. Huckelberry is interested in that company?

A. No sir, not in that company.

Q. Is he interested in any wells which you drilled?

A. I drilled a well for Mr. William Johnson on a 10 acre tract of Mrs. Huckelberry's, but of course, I never knew Mr. Huckelberry. I contracted to drill those wells from Mr. William Johnson and he paid me for it.

Q. Now Mr. Booker has testified as follows, that the wells which I point out to you on the tract being a third well from the railroad on the McDaniel eighty, were drilled in about 250 barrels; that the well to the west of that was drilled in doing 150 barrels; that the well still further west, the one against the railroad, some-
515 where between 75 and 100 barrels; that the two wells east of the third one that I have mentioned came in doing about 25 barrels apiece. Mr. Markhams lease manager has testified that the well on the McCaleb lease immediately north west of the north eighty, came in between 50 and 75 barrels, and after a year is still producing 50 barrels. Mr. Lannom, who owns the property west of both of these eighties his testified that the well which is farthest north on his tract and west of the north eighty came in doing

between forty and fifty barrels, as I recollect, and the next well south was of greater capacity and the third well south came in doing 100 barrels natural. Mr. Lannom testified further that the well which I point to you being 131 feet from the south west corner of the south 80 came in at ten barrels. Mr. Markham's lease manager testified that the well which I now indicate to you as being east of the railroad and 152 feet south of the south line came in doing from 10 to 25 barrels. He testified substantially the same of the wells west of the railroad, and 476 feet south of the south line; he testified also of an abandoned well 506 feet of the south line, and that a poor showing had been made in that case. Have you any personal knowledge of the capacity of a well drilled 220 feet south east of the south eighty?

A. Yes, sir, I think that well came in about 50 or 75 barrels.

Q. Do you know personally about that?

A. Just what the contractor that drilled it told me; that is the well on the a small tract of land, the north well.

Q. Now considering what I have told you with reference to these wells and what you know of this one well, which of those two eighty acre tracts would you regard as the more valuable?

A. Well, I would just as soon have this tract as this one (the south and the north). The way the wells drill, shows the pool to come right through this way (north west and south east).

Q. Does the small well immediately east of the railroad and 152 feet south of the south line of that eighty, indicate that the land immediately north of that is very valuable or favorable to sustaining large wells?

A. I don't think that this well would condemn this any.

Q. What would the effect be of a small well?

A. May be a close hard sand, and may be a location from it, you would probably get a good well.

Q. Taking that in connection with the other small wells in that immediate locality, what is your judgment?

A. Well, of course, I think that you go out on the edge of this pool and you go south west (indicating a place south west of the south eighty).

Q. Would you regard any part of the south eighty as being edge stuff?

A. Yes, sir, I think this corner here (indicating south west corner).

Q. If you recollect your testimony, you will be reminded that you said of the fact that the Lannom wells become larger as you went south, indicated that the production in that direction would probably be on a larger scale, would they not?

A. You remember Mr. Huckelberry putting that question to you?

A. He mentioned these wells, and this well here not being shot, it looks as though this territory here (Indicating south eighty), would be quite as good as this (indicating north eighty).

Q. What does the presence of the last well coming in good, not being shot, indicate?

A. That the south territory would be as good as the north.

Q. Now if that well of large capacity indicates good property would not you say that a well of small capacity doing 10 or
516 15 barrels at the beginning, indicates property that is not so valuable?

A. We are apt to drill those small wells right among good big wells.

Q. The point is, I don't distinguish how you can say that this large well near the north eighty is not the result of loose sand when the small well is not the result of tight sand?

A. It is not; you might get a good well here and a small well there.

Q. It is largely a speculation?

A. Yes, sir.

Q. Is it not true that oil property, the value of which is indicated by the presence of large wells?

A. Yes, sir, they like to get by the side of a good well.

Q. Now, in regard to the drainage, how far do you think a well of the capacity such as I have indicated on the north line would particularly drain property, in view of your experience?

A. I think they would drain five or six hundred feet.

Q. Then the same would be true of the Lannom wells on the west?

A. I guess so; I don't know how close; that would not make any difference, five or six hundred feet.

Q. All territory on the north eighty, excepting within 600 feet of these producing wells, would in your mind be of the same value as though there had been no well there at all,—would be good property in your judgment?

A. Yes, sir, I think so for oil property.

Q. What has been our experience upon this point? Say that a well was drilled in on a tract of land coming in at 250 barrels and in the course of time, a year or two years, it shrinks to 75 barrels, and you drill an offsetting well within 150 feet of the line or 230 feet of that well, what would be the probable production of an offsetting well?

A. Well, I think after four or five days it would be down as low as the offsetting well.

Q. As well as the original well?

A. Yes, sir.

Q. You know, as a matter of fact, that oil men believe that an offsetting well will shrink to the same productiveness as the original well?

A. Yes, sir.

Q. So, if there are five wells along on the McDaniel line, now producing at this time 225 barrels in the aggregate, offsetting wells drilled in for each of them would settle down to practically 225 barrels, would they not?

A. Yes, sir, I think they would. Of course, this drilling this well here would have a tendency to weaken both, and they will both go down faster.

Q. Come in with an initial production larger than the other and then sink to an average production?

A. Yes sir, both go down.

Q. Well, what would be your judgment on this point? As soon as I said before, and that you drill five off-setting wells, what would be probably the initial capacity of those off-setting wells?

A. Well, I don't think they would be a production of over 150 barrels.

Q. For the five?

A. Yes, sir.

By Mr. Bixby:

Q. You mean the production at the start, or after they settle down?

A. After they settle down, for a few days there might be a production there of probably 250 barrels.

Q. What would the north wells, the ones now in existence settle down to, the same?

A. Yes, sir.

517 By Mr. Veasey:

Q. I think you have testified that the development around this property indicates that the trend is north west and south east?

A. Well, of course that is in my theory of this oil trend, but the trends for this country, and all will be drilled up it will run north east and south west. But there are places, where those pools widen out.

Q. Well if that was true in this case, the trend eliminates part of the north eighty and also part of the south eighty would it not?

A. Yes, sir.

(Witness excused.)

J. B. SPICKER, being first duly sworn testified as follows, for contestant, being sworn by Commissioner Bixby:

Examination.

By Mr. Huckelberry:

Q. What is your name?

A. J. B. Spicker.

Q. Where do you live?

A. Cleveland, Oklahoma.

Q. What business are you in?

A. The oil business.

Q. How long have you been in the oil business?

A. Since 1877.

Q. Just state generally your business?

A. Well, I have been contracting and drilling oil wells for myself.

Q. Have you done any drilling or owned any producing wells in the vicinity of Bartlesville?

A. No, sir.

Q. Have you drilled any wells around here?

A. Yes, sir.

Q. How many wells have you probably drilled in the neighborhood of Bartlesville?

A. Six or seven.

Q. You are familiar with what is called the Bartlesville sand here?

A. Yes, sir.

Q. I will ask you if you know the eighty acres known as the McDaniel eighty and the wells along the south edge of it?

A. Yes, sir, I do.

Q. Did you ever have anything to do with those wells?

A. No, sir, I didn't; only from observation.

Q. Now immediately south of the McDaniel eighty, is what we call the north eighty, which is the eighty in contest, and immediately south of that is what we call the south eighty. Do you know anything about the wells which have been drilled south east of the south eighty?

A. No, sir, only from what I heard them talk about when they were drilled in.

Q. Do you know anything about the production on the Lannom tract west of the north eighty?

A. Only what I hear; just general information.

Q. Now from what you know, you have observed that field?

A. Yes, sir, I have taken notice of it myself considerably.

Q. Well, from what you know and the general information you have in regard to the field what in your opinion is the most valuable for oil purposes, the north or the south eighty?

A. At the present time, I would consider the south 80 the most valuable.

Q. Lease of which would bring the greater bonus?

A. I should think the south eighty would bring the greater bonus, because the south eighty has not been drained as much as the north eighty, and in my way of judging there is better territory on the south eighty than on the north eighty.

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By Mr. Veasey:

Q. How is that preferable?

A. By the wells being on all sides of it, and on the south east corner, and the north eighty on the north west corner is partly condemned as far as oil is concerned, running into gas, which makes more preferable territory on the south eighty than on the north.

Q. Do you know whether there are any small wells near the south line of that south eighty?

A. They were all reported good wells when they came in.

Q. You have no personal knowledge?

A. No, sir.

Q. If the testimony shows that the four wells on the south of the south eighty range from 10 to 25 barrels, do you call them large wells?

A. No, sir, I do not.

Q. Does that increase or decrease the value of the lands near them?

A. I understand they were better than that.

Q. Then if they are not any better than that, your judgment is entirely wrong;—you base your judgment on that they were larger?

A. I base my judgment on what was reported to me.

Q. What was reported to you?

A. From 50 to 60 barrels.

Q. I am going to tell you what the witnesses have testified in regard to these wells. Frank Booker, the man who is interested in the McDaniel wells, testified that the well which I indicate, being the middle well, came in at 250 barrels; the one next to that on the west at 150; the one next to that one on the west and against the railroad 75 to 100; the two wells to the east of the middle well 25 barrels each; John Markham's lease man testified that the well on the McCaleb tract within 60 feet of the north west line of the north eighty came in about 50 to 75 barrels; Lannom, who owns the lands on the west testified the wells which I indicate the one farthest north, came in about 60 barrels, and the next one south of that is still better, and the one still farther south is still better. The man who drilled these wells testified that the wells west of the South eighty came in at 250 barrels and is doing well, Markham's lease manager testified that the well east of the railroad tract and 152 feet south of the south line of the south eighty came in doing 25 barrels; that there is an abandoned well which was drilled into the water 506 feet south of the south eighty. He testified further as to the capacity of this well south east of the south eighty; that it came in doing 10 to 25 barrels. Mr. McMann testified, it is a fifty barrel well. If what I said is true, what is your judgment about the value of these two eighties.

A. At the same time when those wells have taken the amount of oil as you have represented out of this territory, within sixty feet of this line, haven't they taken the greater portion of that oil (witness refers to the second and third well on the McDaniel tract east of the railroad, and his reference is to the north edge of the north eighty). I was getting to your answer. As you go south here these wells are better (referring to the wells on the Lannom tract west of the north eighty). Coming down here and these wells being drilled and as it has to go straight south (referring to the south east from 519 the south well on the Lannom tract west of the north eighty, and the well south east of the south east corner of the south eighty).

Q. When you gave your testimony in reply to Mr. Huckelberry's question, you didn't have in mind the small productiveness of those wells which I have described to you?

A. Not as small as you make them.

Q. Now, if what I say is true, then which of those eighties would you regard the more valuable?

A. According to my idea is from here, from the north west to the south east of the south eighty, that would be my idea and that is what I based my opinion on; not only today but nine months ago.

By Mr. Hastings:

Q. You state from the north west to the south east do you?

A. Yes, sir.

By Mr. Veasey:

Q. Now, here is a well within 152 feet of the south eighty, on practically the east line of the west forty of the south eighty, and at the other extremity of that forty is another small well, what is the effect of those two small wells on that eighty?

A. It hasn't quite as much effect as the good wells on the north of the north eighty (referring to the west forty of the south eighty).

Q. What indicates good property, small wells or large wells?

A. Large wells; that is when large wells are drilled in on all sides at the same time, but when you put in large wells on one or two sides and let it stand it decreases the valuation a great deal in my experience.

Q. You say you are from Cleveland, Oklahoma?

A. Yes, sir.

Q. Have you drilled any wells for the Test Oil Company?

A. Yes.

Q. How recently?

A. Not since last June.

Q. Are you employed by them now?

A. No, sir.

Q. Did you drill any wells in this locality for them?

A. Yes.

By Mr. Hastings:

Q. Are you interested in the Test Oil Company in any way?

A. No, sir.

Q. They just simply paid you for drilling them?

A. Yes, sir.

Q. Are you interested in this case in any way?

A. No, sir.

(Witness excused.)

W. H. JOHNSON, being first duly sworn by Commissioner Bixby, testified as follows for Contestant.

Examination.

520 By Mr. Huckelberry:

Q. State your name?

A. W. H. Johnson.

Q. Residence?

A. Bartlesville.

Q. What is your occupation?

A. Oil producer.

Q. How long have you been in the oil producing business?

A. I first began in the production of oil in 1877, and I have been in the business most of the time since.

Q. In a practical way,—in the practical end of the business,—well that you have just told me, your general experience?

A. The experience at that time and since was in contact with

the wells and the fields, but I never was a driller, but I have practical knowledge of the business.

Q. How long have you been in the Territory field, Mr. Johnson?

A. About three years. I came from the Kansas field to the Territory field two years ago the first of last July.

Q. Have you any production around or near Bartlesville?

A. We have production south of Bartlesville.

Q. What Company are you connected with?

A. I am the president and the general manager of the Sagamore Oil Company.

Q. How much production are you interested in in the neighborhood of Bartlesville?

A. About 350 barrels a day south of Bartlesville.

Q. On what allotment is that production south of Bartlesville?

A. A portion of it is in Section 13, the Buford allotment, and a portion in Section- 18, 26 and 12.

Q. Are you acquainted with what is known as the McDaniel tract, lying south of town,—are you acquainted with the five wells along the south side of the McDaniel Addition?

A. Yes sir.

Q. Now where is the production in Section 13, that you refer to which you have or your company have?

A. It is in the south western portion of the south east of the south east.

Q. Being in this forty immediately south east of this south eighty—In reference to the McDaniel Addition, the eighty immediately south of that we call the north eighty and the eighty south of that is the south eighty?

A. Yes sir.

Q. And your production is in the south east corner of the south east of the south eighty?

A. Yes sir.

Q. How close does your production lie to the south eighty? I will ask you to look at this plat here and let you identify which wells there you are interested in?

A. This is ours and this and this (referring to four wells on the west half of the southeast of the southeast, and not including the two wells on the northwest of the northwest of the southeast of section 13.

Q. Are you familiar with this well right at the south east corner of the south eighty?

A. Practically so.

Q. What character of well is it, Mr. Johnson?

A. About a 20 barrel well.

Q. Are you familiar also with the production on the Mary Thursday land south of the south eighty?

A. The first well that was drilled in was turned into a tank at about 4:30 in the afternoon, and by 9 o'clock the next morning, it had filled a tank, a 250 barrel tank.

Q. Are you familiar with the production of Mr. Lannom's well on the west of the north eighty?

A. Not at all accurate as to the amount of the production.

Q. The general character of the wells?

A. The general character of the wells are good, not large.

Q. How as to the wells at the north west corner, are you familiar with those, also being the Markham wells of the McCaleb addition?

A. Yes sir, I am familiar with those.

521 Q. Have you paid any especial attention to the wells around about the land in controversy and also the south eighty so as to have an opinion as to the respective value of those two eighties?

A. I have.

Q. Which in your mind is the more valuable for oil purposes, the north or south eighty?

A. As they stand today the south eighty would be the most valuable, because it has not been drained to the extent that the north eighty has.

Q. Now I will call your attention to the Lannom wells; the testimony in the case so far shows that the north Lannom wells came in about sixty barrels. The well immediately south of that came in a little bit better, both having been shot, and the third being the south Lannom well came in 100 barrels natural and has not yet been shot. I will ask you in the light of that testimony if that would increase or decrease your idea of the value of the south eighty?

A. It would not materially change it. I find from actually visiting the wells on the Mary Thursday allotment, which was turned into the tank one Saturday afternoon, and going there Sunday morning that that well seemed to be about as good as any wells here in the McDaniel addition, which showed the fact that that stream of oil runs across both eighties.

Q. Now, what would be the difference in value of the north eighty if this should be divided up into 20-acre tracts, and the 20-acre tracts, the lease of them, come into possession of adverse parties, would it decrease the value of that tract of land for oil purposes?

A. A decided decrease in value.

Q. Are you interested in the Test Oil Company?

A. No sir.

Q. Are you interested in this case in any way?

A. No sir.

By Mr. Veasey:

Q. Are you related in any way to any stockholder of the Test Oil Company?

A. I am.

Q. Who is that?

A. Mr. E. P. Johnson.

Q. What office does he hold?

A. He is the manager of the Company at large, and is vice-president.

Q. He lives at Buffalo?

A. No sir he lived at Bradford, Pa.

By Mr. Huckelberry:

Q. Have you examined this plat which I have here prepared by Mr. Hickey?

A. I have.

Q. I will ask you if that plat is accurate, and shows the position of the wells in the neighborhood which it pretends to show?

A. It is accurate, excepting I don't know the exact measurements; it is accurate in a general way, I would say from observations that it is about accurate.

Q. Do you know Mr. Hickey, the gentleman who made the plat?

A. I do.

Q. Do you know where he is?

A. No sir, I do not.

Q. Do you know whether he is in town?

A. I do not think he is; he left here some weeks since, and I think that he has not been back.

By Mr. Huckelberry: I desire on that identity to offer this plat.

522 Q. Are you familiar especially with the location of the wells south east of the south eighty?

A. Yes sir.

Q. I will ask you,—I call your attention especially to the wells shown on this plat in that section of the field and ask you whether or not the blue print shows correctly those wells?

A. Substantially correct.

Q. Do you know Mr. Hickey's experience, or have you any knowledge as to his experience as a surveyor and engineer?

A. Yes sir.

Q. What is it?

A. We have had some surveying about a half dozen different properties, and he has given us general satisfaction and his reputation is good.

By Mr. Huckelberry: Now, I offer this plat as Contestant's Exhibit B.

By Mr. Veasey: We object because it has not been properly identified.

By Mr. Bixby: The plat will be filed.

By Mr. Veasey:

Q. You have testified that a well was drilled on the Mary Thursday tract between the hours of 4:30 P. M. and about 9:00 A. M. filled a 250 barrel tank?

A. Yes sir.

Q. Do you know the exact location of that well with reference to the south eighty?

A. About 600 feet south of the south eighty.

Q. South of the east forty of the south eighty or south of the west forty of the south eighty?

A. The west forty of the south eighty.

Q. Does that indicate to your mind that the south eighty is valuable for oil purposes?

A. It does.

Q. How does that indicate to your mind that such is true?

A. It is a well established fact that the general tendency of all oil flows to a point, and in this field it is from north to south or northwest to the southeast.

Q. And the presence of this 250 barrel well being a large well, indicates that the south eighty is valuable for oil purposes?

A. Yes sir.

Q. If it develops that there are small wells between this large well and the south eighty, what is your judgment as to the value of the south eighty?

A. That frequently occurs in this field.

Q. I am going to call your attention to the testimony of the witness Mr. Booker who testified that the middle well of his five came in about 250 barrels; that the well west of that about 150; that the well still farther west about 75 barrels; that the two wells east of this middle well about 25 barrels apiece. Mr. Markham's Lease Manager testifies that they have a well within 60 feet of the northwest corner of the north 80 that come in from 60 to 75 barrels and after a year is still holding up at about 50. Mr. Lannom who is interested in the lease to the west of the north eighty has testified that the north well of the three immediately west of the north eighty came in from 40 to 50 barrels; that the well
523 south of that came in somewhat larger; that the well still farther south came in about 100 natural and has never been shot. Mr. Lannom further testified that the well 131 feet southwest of the south eighty came in about 10 barrels. Mr. Markham's manager testified that a well within 152 feet of the south line of the south eighty and east of the railroad came in between 10 and 25 barrels; that the same was true of a well within 476 feet of the south line of the south eighty; and that an abandoned well, abandoned on account of striking water at 506 feet from the south line, and that the well indicated here at substantially the same showing as these other two wells. You have testified that the well within 220 feet of the southeast corner of the south eighty was about a 20 barrel well at the present time. What did it come in at?

A. I suppose about 75 barrels.

Q. In the light of this testimony which, if those are the facts, I want you to state to the Commissioner which is the more valuable as an oil proposition and upon your reputation as an oil man?

A. You haven't cited the well which I have already testified to.

By Mr. Huckelberry: You mean that all those facts be taken in connection with his own information.

By Mr. Veasey: Certainly.

A. My judgment is one third of the value has been taken off of the north eighty and taking that fact in consideration I believe

the south eighty is as valuable or more valuable than the north eighty.

Q. When you answer the question independent of the drainage which was resulted, simply upon the face of the wells as they were drilled in, which of those eighties is the more valuable?

A. We had no knowledge until those wells were drilled in.

Q. You have stated Mr. Johnson that the large well which you indicated as being in 600 feet of the south eighty indicated to your mind that the south eighty was a valuable oil property because of the large productiveness of that well. Wouldn't it change your judgment if small wells were found between that large well and this large well and this property?

A. In the eight wells drilled east of here we have had some large wells and I still believe that same stream of oil runs across both eighties.

Q. But in replying directly to the question what is your answer?

A. I can't understand that the statement you give in reference to the wells south of there to be an accurate showing of the property.

Q. That is very true but if witnesses who are actually interested in those properties have testified as I say, and I am willing to take the responsibility of the record showing what I say?

A. You say the wells came in at those figures.

Q. Yes sir?

A. Well I have had different information than that.

Q. The men who testified were Mr. Booker, Mr. Lannom and Mr. Cousin, the Lease Manager for Mr. Markham?

Mr. Huckelberry: Not Mr. Booker or Mr. Lannom as to the wells of the Mary Thursday allotment.

(Here question was read to witness.)

524 Q. What answer would you give to that Mr. Johnson. That is a hypothetical case will put it?

A. The fact is I believe that south eighty is as valuable for oil purposes as the north eighty. The fact of the existence of small wells always tend an influence to a certain distance.

Q. Mr. Johnson if a large well within 600 feet of the property has indicated to your mind that the property is valuable why shouldn't small wells within 130 feet, and three or four wells at that, indicate that it isn't so valuable?

A. I have stated that they have had a legal influence.

Q. What do you mean by legal influence?

A. That portion of the sand in the location where the well is drilled and immediately around the well is close sand and would not give up the oil as looser sand in some other section.

Q. Might it not indicate that they are edge wells?

A. This well to the southeast got a better sand than our wells east of it. They didn't drill through to the lower part of the sand where we got the most of our oil, therefore I don't admit that that well indicates that they would not have had as much oil or a larger well as we if they had drilled on through, and therefore the same facts may be true, and then again in this field, I believe in this

immediate field there are 20% of the wells that are not drilled deep enough, and I believe I can show the truth of that fact and have showed it within the last two weeks by drilling two wells deeper. If those wells, if they came in at 10 barrels apiece upon drilling deeper in the sand they would be much larger. (The well referred to by witness in first part of his answer is the one immediately southeast of the southeast corner of the south eighty).

Q. Mr. Johnson when you first testified in regard to the relative value of these two tracts of land were you informed of the three wells to the south of the south eighty which I described were of the capacity that I indicated, upon one of my former questions to you?

A. I have frequently discussed the showing of that Territory with Mr. Markham, not in relation of this south eighty but from general information, and I have formed a different opinion of that territory.

Q. And it was upon that different opinion or rather judgment of the relative value of these two tracts was given, was it not?

A. Well on the general character of the production there.

Q. Isn't it true that the prices of oil leases is controlled by the presence or absence of large or small producing wells. That is regardless of value, independent of the drainage?

A. It is true they have their material influence.

Q. What has more influence. Is there any circumstance that has more influence. The question of trends is almost all together speculation, isn't it Mr. Johnson?

A. No sir.

Q. Scientifically determined?

A. Scientifically determined. To show a line the stream generally runs from north to south, and you can't change the line.

Q. From a scientific standpoint and the actual presence of wells, which is your choice from determining oil flows?

A. I would not try to run across field in this country.

Q. You prefer to have the wells near the property which you are going to produce, Mr. Johnson?

A. If I have a 1000 barrel well and had a chance to buy property one mile south, and a chance to buy a quarter east, I would take the land south.

Q. Well if you had a chance to buy land within 250 feet of it and another property of a 10 barrel well in 150 feet of it.
525 which of the two would you prefer?

A. I don't understand that question.

Q. If two propositions before you, one having a thousand barrel well within 250 feet and another having a 10 barrel well within 150 feet?

A. Depending upon the production.

Q. All together?

A. No sir, not all together.

Q. Well claiming that the 10 barrel well was the most favorable production from that property and the other the most unfavorable, which would you prefer?

A. Why I would prefer the larger well of course.

Q. I think you have testified that you were the brother of the General Manager of the Test Oil Company?

A. Yes sir.

Q. To what extent is he a stock holder?

A. I don't know.

Q. You know he is a stock holder?

A. I do.

By Mr. Huckleberry:

Q. Do you hold any position in the Oil Producing Association?

A. I am Vice President of it.

By Mr. Veasey:

Q. In the light of your experience in this field how far do you think wells of the capacity indicated on the McDaniel eighty drain surrounding land; how many feet, that is if you can testify upon that point?

A. At the most number of wells that should be drilled to drain land it should not be over one well to ten acres.

Q. Can't you tell me simply in feet?

A. One well to ten acres would make an area of 660 feet square.

(Witness excused.)

(Stenographer Wright finishes reporting the testimony in this case at this hearing).

ANNA M. MARTIN, being duly sworn by Commissioner Bixby, testified as follows:

Mr. Veasey: Mr. Bixby, we would like for you to examine this witness; we haven't consulted with her and do not know what she will swear.

Examination.

By Mr. Bixby:

Q. What is your name?

A. Anna M. Martin.

Q. How old are you?

A. Twenty-six.

Q. Where do you live?

A. Bartlesville.

Q. Are you a citizen of the Cherokee Nation?

A. Yes sir.

Q. Citizen by blood?

A. Yes sir.

Q. Have you filed on your allotment?

A. Yes sir.

Q. Where did you file?

A. Filed on the south here, below Sam Bob's allotment.

526 Q. Do you know the technical description of the land?

A. It is in Section 13.

- Q. Do you know the Township and Range?
A. Twenty-six and twelve.
Q. What part of the Section is it?
A. I can't explain it to you.
Q. Do you know the location of the land claimed by Mrs. Heady and Sam Bob?
A. Yes sir.
Q. Is it south or north of that tract?
A. North of that.
Q. Is it north, or is it south, of the tract originally filed on by Sam Bob? (No response.)
Q. Do you know where Mary Thursday's allotment is?
A. Yes.
Q. Is this land you filed on north of Mary Thursday's?
A. Yes sir.
Q. Then it is between Mary Thursday's and Sam Bob's?
A. Yes.
Q. How many acres in that piece?
A. Called eighty.
Q. Did you ever live on that tract of land?
A. No—right on it.
Q. Did you ever own any improvements on it?
A. No sir.
Q. How did you come to file on that tract of land?
A. Well Mr. Thursday give me my allotment down there and kept telling me not to file on any other piece, and not to buy any for he would have plenty there for me. And I went down there a day or two before I went to the file and asked him about it, and he says there is no body put on that eighty, and that is where you can take your allotment.
Q. Wallace Thursday?
A. Yes sir.
Q. He gave you this tract of land to file on?
A. Yes, he said when the allotment come in and he lost out I could have it.
Q. Did he give you anything in writing?
A. No only that. He told me to wait until the time to settle it.
Q. Did he ever give you any writing in regard to it?
A. Yes.
Q. When?
A. Short while back.
Q. How long back?
A. Not been very long ago.
Q. How long back?—Week, month, year?
A. No, it hasn't been a year.
Q. Been a month?
A. Not been a month.
Q. Been a week?
A. I don't know about that.
Q. You can't tell whether it has been a week or a month?
A. I don't remember.

Q. Have you got that writing?

A. Not got it with me.

Q. You have it though?

A. Have it at home.

Q. Do you remember what that writing contained?

A. No sir.

Q. Can you read or write?

A. Yes sir.

Q. You have read it, haven't you?

A. Yes sir.

Q. But you don't remember what was in the paper?

A. No sir.

Q. Did you file on this land of your own volition, or did somebody request you to do it?

A. I done it on my own accord.

Q. No one ever talked to you about it?

A. No sir.

Q. You never talked to any one except Wallace Thursday in regard to it?

A. No.

By Mr. Rodgers, on behalf of the Commissioner:

Q. Did you know this land had been already filed on by other people?

A. Yes sir.

Q. You already knew this?

A. Yes sir.

Q. Who are they?

A. One is Wallace Thursday and the other is Jess L. Harnage.

Q. Had they filed at the time you made application for it, or did you file first?

A. Yes, filed after Harnage.

Q. Did you enter into this agreement with Wallace Thursday before you filed that contest?

A. Yes. He told me that I could have an allotment down there, and I went down there and told him about it and it was all right with him.

Q. How long was that before you went to file on the land?

A. A week before I went down there. I went down there on Wednesday, and we went down to file Thursday. And he said it was all right, and I went home and got ready and Thursday we went.

Q. Was that the first time you ever had talked with him about this tract of land?

A. No sir.

Q. When before that?

A. He had always told me all the time I could have an allotment down there, and told me not to file or buy any lands any where else,—that there was a plenty of land for us all.

Q. Wednesday before you sent to the land office the first time, he told you what particular tract of land you could have?

A. That was the first time.

Q. Before that it was generally understood that you were to have an allotment out of this Thursday land?

A. Yes.

Q. Are you related to Wallace Thursday?

A. Step grand-father.

Q. Is Mary Thursday your grand-mother?

A. Yes sir.

Q. What relation are you to Sam Bob?

A. He is my brother.

Q. Is he your full brother?

A. Yes sir.

Q. Have you always lived with Mary Thursday and Wallace Thursday?

A. Not always.

Q. Were you raised by them?

A. No, I stayed there awhile, but I don't know how long.

Q. When did you leave them?

A. Frenchman stole me away from there. Thursday can tell you about that.

Q. When you were a small child?

A. Yes sir.

Q. You haven't lived with Wallace and Mary Thursday since you were a small child?

A. Not right there; lived close to them.

Q. Who have you lived with?

A. Stayed with Frenchman awhile, and then I went off to Union School, and then when I came back I went to working out.

Q. Do you know anything about any payments you have received as a citizen of the Cherokee Nation?

A. I drew payments but never got any benefit of them.

Q. Do you remember the last time money was drawn for you?

A. I think in 1896.

Q. Who drew that money?

A. I reckon it was Frenchman.

Q. What is his full name?

A. I don't know, Frenchman is all I know; they called him Frank.

Q. Delaware Indian?

A. Yes sir.

Q. You were living with Frenchman at the time of the 1896 payment?

A. No sir, off to Union School.

Q. Do you know anything about any other payments in which money was drawn for you?

A. Drawn money—Wallace Thursday drew some and my father drew some.

Q. The remaining payments, Frenchman has drawn?

A. Yes, two of them.

Q. The last ones?

A. Yes sir.

Q. You don't know what he did with the money?

A. Run through with it is all I know.

Q. Do you know of Wallace Thursday and Mary Thursday ever
528 getting any of your payments during the last,—any of the
money which you received from the Cherokee Nation, at
the last two payments, for instance?

A. I don't know anything about the last payments.

Q. But in the last two payments, you are sure that Frenchman
has got the money for you?

A. I can't say he got it, but I think he is the one that got it.

By Mr. Veasey:

Q. What kind of writing was that that Wallace Thursday gave
you?

A. (No response.)

Q. Typewriting?

A. Yes sir.

Q. Do you know where that was prepared?

A. Yes sir.

Q. Where?

A. Gordon's office.

Q. About how long ago was that drawn up?

A. I don't remember just when it was.

Q. Wallace Thursday signed it?

A. Yes sir.

Q. Any witnesses?

A. Yes sir.

Q. Who were they?

A. Gordon and Miss Hickey.

Q. Do you know Wallace Buford?

A. Yes sir.

Q. When was it that you went to Tahlequah to file?

A. It was I think the 20th of May—been two years ago.

Q. You and your husband went together?

A. Yes sir.

Q. How long did you remain there before you filed?

A. I can't tell; we was there for several days.

Q. Who paid your expenses down there?

A. My husband borrowed money.

Q. From whom?

A. I can't tell you; he borrowed it from,—I can't tell you who.

Q. Do you know anything about Wallace Buford paying part
of the expenses down there?

A. I think he let my husband have some money down there.

Q. Didn't he want a lease on the land for the Company?

A. I never talked much with him about it.

Q. He talked to you some?

A. Yes. I wouldn't talk to him about leasing because I told
him I didn't have any right to this.

Q. Did he mention the Company the lease was to be taken for?

A. I don't know for certain.

Q. What is your recollection?

A. Either Trust Company or Test Company, I don't know which.

Mr. Hastings:

Q. You gave a lease afterwards on this land?

A. No sir.

Q. Didn't you give a lease to Roth Barothers?

A. No sir, they talked with us about it.

Q. You entered into a contract with them to give them one in the event you won the lands?

A. Yes, he wanted a lease if we won it.

Q. You never did enter into a contract with the Test Company?

A. No sir.

Q. They have never paid you anything?

A. No sir.

Q. Was there any agreement with Wallace Thursday a week or two ago that you were to withdraw from the south eighty?

A. No such way as that.

Q. You haven't that agreement here with you?

A. No sir.

Q. Did you agree to execute an oil and gas lease when you went into this contract with Wallace before Gordon and that other witness, to Mr. Butler or his company?

529 A. No sir.

Q. Did you agree to execute any oil lease at all here at the time you and Wallace entered into this agreement?

A. No sir.

Q. That was the only contract you signed?

A. Yes sir.

Q. Never signed any other at all?

A. No sir.

By Mr. Bixby:

Q. Did you make this filing entirely in your own interest, or was it done in the interest of Sam Bob?

A. I don't understand it.

Q. Did you make this filing for your own individual interest?

A. Yes sir.

Q. You propose to claim the land, do you, and insist on getting it?

A. The way Wallace said and the way we did this,—we had been depending on it.

Q. You expected to get it, did you?

A. That is what he say.

Q. In the event Sam wins the land, do you intend to give it up to him, or claim it for yourself?

A. I don't know anything about that.

By Mr. Rodgers on behalf of the Commissioner:

Q. Suppose Sam Bob should lose out on that north eighty and couldn't take it, would you still want to take this south eighty, even though he couldn't get any other land?

A. I don't know anything about that; I am here alone, and I ain't going to say very much.

Q. Do you mean by that, you want this south eighty if you can get it, no matter what happens to any body else?

A. I didn't say anything about that.

(Witness dismissed.)

WALLACE BUFORD, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Veasey:

Q. What is your name?

A. Wallace Buford.

Q. Are you a citizen of the Cherokee Nation?

A. No sir.

Q. What is your postoffice address?

A. Bartlesville, I. T.

Q. How long have you lived in the neighborhood of Bartlesville?

A. About seven years.

Q. Do you know Anna Martin, who has just testified?

A. Yes.

Q. How long have you known her?

A. About five years.

Q. You heard her testimony about your letting her have some money at Tahlequah when she filed?

530 A. I didn't let her have any money.

Q. Gave her no money at any time?

A. No sir.

Q. Did you loan her any money?

A. No sir.

Q. Did you lend her husband any money?

A. Yes sir.

Q. What is his name?

A. George Martin.

Q. How much money did you let him have?

A. Thirty-five dollars.

Q. What were you doing at Tahlequah at that time?

A. Looking after my allotments and some contest cases and taking some people to file.

Q. Were you leasing for any particular company then?

A. Test Oil Company, part of the time.

Q. Was there any understanding between you and the Test Oil Company, under which you were to get any proportion of the oil

from the land in contest between Ella E. Heady and Sam Bob, in the event Ella E. Heady prevailed in that case and gave a lease to the Test Oil Company and the lease should be approved?

A. I had a general understanding on all land.

Q. What proportion of the oil were you to get?

A. I don't know that that has anything to do with the case, what my transactions with the Test Oil Company might be.

Q. Have you ever sold that contract?

A. Yes sir.

Q. For what price?

A. I don't know that it has anything to do with this case.

Q. Whom did you sell it to, Mr. Buford?

Mr. Hastings: It is not my purpose to object, but unless it could be shown that this has some relevancy, I don't see any necessity to inquire into the personal contracts of this witness.

Mr. Bixby: What do you expect to show.

Mr. Veasey: We expect to show that he had something to do with this sale from Wallace Thursday to the Test Oil Company.

Mr. Huckelberry: We object to it, because there is no controversy as to the fact that this land was bought from Ella Heady.

Mr. Bixby: You can answer the question if you want to, and if you don't want to, you need not.

By Mr. Veasey:

Q. What were you to do in consideration of this proportion of the oil you were to get on this land?

Mr. Hastings: I don't see the relevancy of that. So far as the south eighty is concerned, it is admitted that Wallace Thursday sold it to Heady for \$2,700.00 April 1, 1904, and that a bill of sale was executed, and the money placed on deposit. It is admitted that it was bought,—we base our title upon it.

531 Mr. Veasey: If the Commissioner please, when this case came up first Wallace Thursday testified that he made this sale because certain persons came to him and told him he would have a number of contests unless he made that sale.

Mr. Hastings: That question has already been settled. That was settled by the Secretary of the Interior, and the land was ordered divided and it was sent back here. These questions are not now before us for investigation.

Mr. Bixby: Go ahead.

Mr. Huckelberry: There is another objection to it. There has never been any testimony offered that Wallace Buford or any one else was to get a particle of the oil off of this land.

A. "Most of this land I was getting was surplus Delaware land, my wife being a registered Delaware. At that time she was not a surplus land holder. I bought this land in her name, and she filed Cherokee citizens on it, and secured different leases for the Test Oil Company.

By Mr. Veasey:

Q. Is that your entire answer to the question?

A. Yes sir.

Q. What did you do in order to gain any per cent of the oil to be produced on this north eighty, in the event the lands should be secured for Ella Heady?

A. I don't know that I did anything with that particular eighty.

Q. What were you to do?

A. That was a general contract and applied to any land the Test Oil Company might get here.

Q. It covered the north eighty, provided you brought about that sale?

A. Included any land.

Q. Including the Bob eighty?

A. I suppose that was included in it.

By Mr. Huckelberry:

Q. If I understand your testimony, you had a general contract with the Test Oil Company to secure leases for them of surplus Delaware lands?

Q. Yes sir.

Q. And you were to receive a certain contingent sum for your services?

A. Yes sir.

Q. Did you have any special contract with them whatever concerning the land in controversy?

A. No sir.

Q. Your contract then was simply a general contract for services?

A. Yes sir.

Q. You did not perform any services in regard to this particular tract of land?

A. No sir.

532 Q. Have you ever made any claim of the Test Oil Company for services other than you have stated just now?

A. No.

By Mr. Veasey:

Q. Have you received any money or thing of value directly or indirectly from the Test Oil Company in consideration of services rendered in connection with the sale of the Sam Bob eighty to Ella Heady?

A. I made a general settlement with the Test Oil Company,—not on that particular eighty.

Q. Part of your general settlement included the services rendered in connection with that eighty?

A. I never did any service on that particular eighty.

Q. Did you get any money directly or indirectly, or are you going to get any money?

A. Not on that eighty;—on this general contract.

Q. Did that include this eighty we have been talking about?

A. No sir.

(Witness dismissed.)

Witnesses for Contestant.

J. H. HUCKELBERRY, being duly sworn by Commissioner Bixby, testified as follows:

Examination.

By Mr. Hastings:

Q. What is your name?

A. J. H. Huckelberry; residence Muskogee.

Q. You are one of the attorneys for the contestant in this case?

A. Yes sir.

Q. You were on July of this year?

A. Yes sir.

Q. Were you in Muskogee and before the representative of the Commissioner to the Five Civilized Tribes on July 17th and 18th, 1906, when Sam Bob appeared before the representative of the Commissioner to file his confession of judgment as to the land in controversy?

A. I was.

Q. At that time did you know that a decision had been prepared and signed by the Commissioner to the Five Civilized Tribes on the 17th day of July, 1906?

A. I had no knowledge whatever of such a decision.

Q. Go ahead and make a statement,—what was done by Sam Bob and what was said by him, and what his information was with reference to his confession of judgment, and what he was asked to do?

A. On the morning of July 18th, I think it was, I saw Sam Bob and Wallace Thursday at the office of the Commissioner in Muskogee in company with A. H. Norwood. I was told by Mr. Norwood that Sam Bob desired to confess judgment in favor of Ella Heady, whom I represented. I then talked with Wallace Thursday and also with Sam Bob in order to satisfy myself that such were the real wishes of Sam Bob and also of Wallace Thursday. I went over the matter especially carefully with each of these men, and each of them told me that such was his desire, and Thursday said that he thought it would be much better for Sam Bob to take the south eighty, because it was more valuable for agricultural and oil purposes. This statement was also made to me by Sam Bob. I was especially careful about this, because I felt that on account both of the contest and on account of the connection of the Delokey Company with same that some question might arise after that time, and I wanted to be especially certain as to what the real truth was. After this conversation I went with Norwood, Thursday and Bob into the office of the Commissioner and Mr. Van Leuven, Cherokee Contest Law Clerk, in charge

of the Cherokee Contest Division, and the examination there was conducted by Mr. Van Leuven; Mr. Norwood, as I remember, telling Mr. Van Leuven what was desired to be done by Sam Bob.

Q. Did Sam Bob thoroughly understand before that first examination, and did he express to you his desires as to what he wanted to do?

A. He certainly understood thoroughly, and that by his action he was giving up all claim to the north eighty, and expected to institute a contest for the south eighty.

Q. Was the testimony taken of Sam Bob then after he had made a motion to confess judgment as to his rights in the land in controversy?

A. Mr. Van Leuven talked with Sam Bob some what at length and then dictated, as I recall, to his stenographer the confession of judgment, and after that examined Sam Bob, which testimony was taken down by the stenographer. This examination was on oath. He then took Wallace Thursday's testimony on oath, and that was taken down by the stenographer. Mr. Van Leuven went over the matter with both Sam Bob and Wallace Thursday carefully before he dictated that confession of judgment.

Q. Up to this time, so far as you knew, no decision of the Commissioner had been rendered, in this case, dated July 17, 1906?

A. I did not, and I am satisfied that no one at that time did.

Q. No one so far as you knew?

A. No, sir.

Q. When did you first learn of the decision of the Commissioner?

A. First I remember now, I had gone home to our office at the noon hour, and was informed that a decision had been rendered the day before, and a copy was served on me as one of the attorneys. It was informed that afternoon sometime, I believe by Mr. Van Leuven.

Q. After this service of this notification of decision, were you present in the afternoon when testimony was taken with reference to the waiver and notice of waiver of right of appeal?

A. I was.

By Mr. Veasey: If the Commissioner please, his presence is indicated on the record, and a great deal of what he is testifying to is a part of the record. I would suggest he confine himself to matters not of record.

By Mr. Hastings:

Q. Before this waiver of right of appeal and testimony was taken in the afternoon after this notice of judgment, was the terms and conditions of that judgment thoroughly explained to Sam Bob, and also to his step-grand father Wallace Thursday?

A. Yes, sir, I personally explained the decision to both Thursday and Bob and secured a plat and showed it to them clearly, which land was given by the decision to Sam Bob and which land was given to Ella Heady, and the money part of the decision. Then to be certain I secured from Mr. Van Leuven a plat, showing the same thing, which was in colors, and satisfied myself that they understood it. Then when we went before Mr. Van Leuven again in the afternoon,

Mr. Van Leuven explained the matter carefully to each of the men. There was no possible chance for either of them not to have understood the decision when they gave their testimony as taken in the afternoon.

Q. There is filed among the papers in this case the answer of Sam Bob and a protest by Mr. Rowland for the firm of Veasey & Rowland, which protest is signed on the 19th day of July, 1906, and this answer is filed to that protest on the 20th day of July, 1906?

A. I recollect it.

Q. I will ask you if you remember whether or not that instrument was thoroughly explained to, and was understood by, Sam Bob also by his step-grandfather Wallace Thursday before it was signed by Sam Bob?

A. I am certain that each of these men understood that instrument, which was signed by them on the morning of the 20th; it was explained to them both, both by you and by myself, and each of us were particularly careful to see there was no chance of misunderstanding.

Q. Was a plat then made of the land, dividing it as the decision divided it, shown to both Sam Bob and Wallace Thursday, showing just what Sam Bob was to get under the decision?

A. They used such a plat; I don't recall when it was made,—whether made that morning or the day before.

Q. Sam Bob and Wallace Thursday thoroughly understood that document when it was signed, and before it was presented to the Commissioner to the Five Civilized Tribes?

A. They did.

Q. Was there any false representation made to Sam Bob with reference to any statement contained in that document or with reference to anything in connection with this controversy?

A. No, sir, there was nothing of that kind, nor any influence used by any one in my presence to get these men to do as they did. On the contrary, they were several times asked if such were their real intentions and desires. I remember specially that you told them that you did not desire to be a party to the matter in any way unless such was their real desires, and that you wanted them to tell you the truth about the matter,—that in substance.

535 Q. You were present before the Commissioner to the Five Civilized Tribes, or the representative of the Commissioner to the Five Civilized Tribes when the hearing was had upon the motion of Mr. Rowland in this answer?

A. I was.

Q. As shown by the record?

A. The proceedings in the record shows that is correct.

Q. Do you desire to state anything else?

A. No, sir.

Cross-examination.

By Mr. Veasey:

Q. How much time was Mr. Hastings present?

A. I don't think he was present in the morning when the con-

fession of judgment was taken, nor in the afternoon when the waiver of the right of appeal was taken and the testimony concerning it. I think Mr. Hastings came in on the noon train, and after that time was present and knew what was going on. He was in Tahlequah, I recollect, on the morning of the day on which the proceedings started.

Q. Did Sam Bob, Norwood and Wallace Thursday come to your office?

A. No, sir, I don't think they did. I was at my office and perhaps Norwood, or it might have been Charley Julian, told me that they were down at the land office that day, and asked me to come down as the representative of Ella Heady. I went down there and called them out and asked them what was to be done.

Q. You were acting as attorney for Ella E. Heady?

A. Yes, sir.

Q. With an adverse interest to Sam Bob?

A. Yes, sir.

Q. You ascertained as to their real wishes in the matter?

A. I did.

Q. Did you advise him after you ascertained his real wishes?

A. No, sir, not that day. The next day there was one matter that you might say I advised him on.

Q. What was that in regard to?

A. A matter I just as leave not go into, but if you insist?

Q. Yes?

A. The question came up upon this protest Mr. Rowland had filed seeking to further represent Sam Bob after he, on the afternoon of the day before had, in effect dismissed the firm of Veasey & Rowland, and there was considered by us what steps best to be taken. That was the only time in which I could be said to have advised Sam Bob. I understood afterwards that Sam Bob understood me to advise him in reference to the filing of the letter of dismissal, which was carrying out in effect what he had done already.

Q. You appreciate the fact that Ella Heady did have an adverse interest to Sam Bob on the north eighty?

A. Yes, sir.

Q. And notwithstanding that adverse interest you were also willing to advise Sam Bob?

A. I represented in this controversy Ella Heady and no one else, and never pretended to represent but that one party.

Q. In your representation of Ella Heady, you wouldn't be carried so far as to advise Sam Bob against his own interest, would you?

A. No, sir. That is not part of my duties as representing Heady. My duty was to try her contest case, she paying for my services. It was not part of my service to advise Sam Bob against his interest.

Q. Where was this reply to Mr. Rowland's affidavit prepared, by you?

A. I think I saw it that morning of the 20th, Mr. Hastings prepared it.

Q. Where was it signed?

A. On the morning of the 20th. We discussed it in his office, but I don't know where it was signed.

Q. Who discussed it, Mr. Hastings?

A. And I.

Q. Was Norwood present?

A. I believe Norwood had gone across the hall part of that time.

Q. Was Julian present?

A. If so, he didn't participate.

Q. Were Sam Bob and Wallace Thursday present?

A. Yes, sir.

Q. Moran present?

A. I think not.

Q. Are you sure of that?

A. No, sir, not sure; he might have been there part of the time; if he did, he didn't take any part in the proceedings.

Q. Incidentally gave you the moral effect of his presence?

A. Well,—

(Witness dismissed.)

W. W. HASTINGS, being duly sworn by Commissioner Bixby, testified as follows:

My name is W. W. Hastings: I am thirty-nine years old; post-office Tahlequah. I am one of the attorneys of record for Ella Heady, the contestant in this case. My recollection is that I was in Tahlequah on July 17, 1906, and that I came to Muskogee on July 18th, if that is the date that this confession of judgment was asked to be made first by Sam Bob. My recollection is it is on Wednesday. The train gets there, if on time, at 1:10 P. M., and it was therefore some few minutes at least thereafter, before I got up to the office or the building in which the Commissioner to the Five Civilized Tribes is located, and after I reached the building I was advised that there had been a confession of judgment filed by Sam Bob sometime in the morning, and I am not right certain, but my judgment now is that the decision rendered by the Commissioner to the Five Civilized Tribes in this case dated July 17, 1906, was served upon me on the afternoon or that evening; I am not exactly positive as to the date, or it might have been served on Sam Bob in my presence. At any rate, I knew of its rendition. After the decision was rendered I knew of Sam Bob going before the Contest Clerk as stated by Mr. Huckelberry, to waive his right of appeal, and my recollection is that it was made of record. I knew it was going on in a general way, but I don't believe I was in there or took part in it. During this time on the evening of the 18th and on the 19th of July, Sam Bob and Wallace Thursday, all were waiting around the office of the Commissioner to the Five Civilized Tribes with the expectation that some final action would be taken so that Sam Bob might file upon the south
537 eighty while he was there and before leaving there to come home so as to avoid a second expense there. They came into my office and talked to me a number of times and expressed themselves as desiring to give up what interest they had in the north eighty, and they stated that they came down there fully intending

to confess judgment as to their interest in the north eighty, and that they thought it would be for their best interests to have Sam Bob file upon the south eighty, for the reason that the south eighty in their judgment was as good a proposition from an oil standpoint as the north eighty; that it was better from an agricultural standpoint, and that it was in one entire tract of land and not divided, and contiguous to the grandmother of Sam Bob, and that Sam Bob was the only prospective heir, and that to have all of that land in a body would be much more to the advantage of Sam Bob. I remember distinctly that a plat was made after the decision was rendered by the Commissioner, showing Sam Bob the exact part that he was to get of each of the forties, exactly how it was divided, and I remember that special and particular pains were taken in view of what had transpired in this case in the past two or three years, to ascertain in truth and in fact if both of them, Sam Bob and Wallace Thursday, clearly, thoroughly and honestly understood that decision and honestly understood what they were doing, and also we talked about this matter for a day or two. On the 19th, Mr. Rowland filed a motion, which is now part of the record, and after having talked with Thursday and Sam Bob and going over the matter in detail with them their answer to Mr. Rowland was prepared and it was given to them so they could thoroughly understand it. They took it home with them to their boarding place that night for the purpose of their reading it over and thoroughly understanding it. On the morning of the 20th when they came back I asked them in the presence of Mr. Huckelberry and others whether or not they thoroughly understood that answer,—whether or not it represented their wishes, and they stated it did, and I asked them if there was anything that needed any explanation, and they said there was one or two words they didn't understand; one of them was the word "contiguous," which was explained to their understanding, and we went over it again, and I especially cautioned them again in the presence of Mr. Huckelberry and may be one or two others that in view of the unusual trouble we had had in this case that perhaps fraud would be alleged, and I was particularly emphatical to inquire of them whether it was of their own free will and accord that document was signed, and if they believed it was then for the best interest of Sam Bob to take the south eighty and waive their right of appeal, and they said it was. Mr. Thursday seemed very much relieved, and so expressed himself to me, saying it was the thing he wanted to do for a long time. He stated to me that he was glad of taking up a matter when that represented Sam Bob's interests. It was understood then, I might say, at least I heard it talked that Sam Bob was to get Three thousand dollars as a bonus from the south eighty and in addition to the ten per cent oil royalty, usual, and he was also as the papers indicate, to be permitted to retain the amount of money he
538 had been paid there for, and only pay back Thirteen hundred and fifty dollars, so that he would have, in addition to getting the south eighty, in the clear the sum of Forty-three hundred and fifty dollars. It was also discussed there that application had been made to set aside this south eighty as the Delaware surplus of

Sam Bob and Mary Thursday, and that under the rulings of the Commissioner if there had been any previous filing upon it, that in the event it was set apart as their surplus holdings these previous filings would be cancelled and that there would be no legal obstacle to Bob's filing upon the south eighty. And it was also explained to him and discussed during these different times that if Sam Bob did not take the south eighty that of course under the rulings of the Indian Agent with reference to the sale of Delaware surplus land he could only claim the improvements upon the south eighty at their appraised value, which would be inconsiderable as compared to the amount of money on the north eighty. My recollection is that they went out to get a notary public to take his acknowledgment to that document. I have testified about them coming back with it signed before D. W. Yancy as notary public. I might say that they remained around there some three or four days; part of the time I was there and part of the time I had gone to my home at Tablequah, but if I remember correctly I returned before they left to come home; but at all events, they expressed themselves during all of that time as being thoroughly satisfied with this arrangement.

Cross-examination.

By Mr. Veasey:

Q. During all the time related by you, you were the attorney of record for Ella Heady?

A. Yes, sir.

Q. If Sam Bob should relinquish the north eighty that would be to the interest of Ella Heady?

A. I didn't think of that.

Q. Some interest to her?

A. Yes, and also to Sam Bob.

Q. If Sam Bob didn't relinquish the north eighty it would be to the detriment of Ella Heady, wouldn't it?

A. Yes.

Q. Was Mr. Moran present when these papers were signed in your office?

A. Mr. Moran was in Muskogee, but whether he was present at that time or not I don't know. He was in my office at times during these days, but I don't know whether he was in at that particular time or not. I am certain he took no part in this conversation.

Q. You knew Moran represented the Test Oil Company?

A. Yes.

Q. Did you in any way represent the Test Oil Company?

A. None in the world.

Q. Mr. Hastings, have you conferred with Andy Norwood in town today, or have you seen him in town today?

A. I think I saw him at the hotel at noon.

Q. Since then?

A. No, been in the office here.

(Witness dismissed.)

539 Mr. Veasey: We would like the record in this case to show the time and residence in which the south eighty is the approved holdings of Sam Bob and Mary Thursday.

Mr. Hastings: We want to have the testimony of Burt Van Leuven, Contest Clerk of the Cherokee Division, as to the representations that were made to Sam Bob and Wallace Thursday before the taking of this confession of judgment at Muskogee on the 18th of July, 1906, and at the taking of the waiver of the right of appeal.

Mr. Rowland: We would object to the taking of that testimony for the reason that Mr. Van Leuven was the tribunal before whom this matter was heard and the testimony taken by him is of record and explains what you have in that record relative to the relinquishment and the waiver of the right of appeal, and we see no reason for taking his independent testimony.

Mr. Hastings: We desire it for the purpose of showing that Sam Bob and Wallace Thursday knew what they were doing and were thoroughly apprised of the situation before they signed this confession of judgment in the first place, and in the second place that they knew fully the terms of the decision of the Commissioner to the Five Civilized Tribes before they gave testimony upon their waiver of the right of appeal and the repayment of this money, and also as to the time of the service of the appeal.

Mr. Bixby: I will take the question of taking Mr. Van Leuven's testimony under consideration, and continue the hearing to another day perhaps.

Mr. Huckelberry: We are perfectly willing to let you take the testimony of Mr. Van Leuven or any body else in your office without our presence if you see fit. We want the matter closed up.

Mr. Veasey: We are perfectly willing the matter should be closed now.

Mr. Rodgers, on behalf of the Commissioner: So you don't object to our closing the records without consulting you?

Mr. Veasey: No sir.

I hereby state on oath that I recorded the proceedings and testimony had in the above entitled cause on November 26th and 27th, 1906, and that pages 1 to 48, 78 to 90, 108 to 131 and 153 to 168 all inclusive of this record contain a true and correct transcript of my stenographic notes taken on said dates in the cause above referred to.

[SEAL.]

S. T. WRIGHT.

Subscribed and sworn to before me this December 11, 1906.

EDWARD MERRICK,

Notary Public.

40 I hereby state on oath that I recorded the proceedings and testimony had in the above entitled cause on November 26th and 27th, 1906, and that pages 49 to 77, 91 to 107 and 132 to 152 all inclusive of this record contain a true and correct transcript of

my stenographic notes taken on said dates in the cause above referred to.

[SEAL.]

GEORGE H. LEASLEY.

Subscribed and sworn to before me this December 15th, 1906.

B. P. RASMUS,
Notary Public.

DISTRICT OF COLUMBIA, ss:

I, Seabury G. Quinn, being first duly sworn, depose and say: That I carefully examined the record in Cherokee Allotment Contest No. 926, entitled, Annie M. Martin, Contestant, vs. Wallace Thursday and Jesse L. Harnage, Contestees, and also the record in Cherokee Allotment Contest No. 830, entitled, Ella E. Heady, by Joshua B. Heady, her husband, contestant, vs. Samuel Bob, a minor, Contestee, the latter having been made a part of the record by stipulation of counsel in the aforesaid case of Martin vs. Harnage; that the foregoing is a complete record of the testimony adduced at the hearings of said causes and of the complain-s on which the hearings were conducted, and of the final decisions rendered in each of the foregoing causes; that I carefully compared the foregoing transcript with the original transcript of record on file in the Office of the Secretary of the Interior, and that the same is a true and correct and an examined copy of the foregoing papers to which this certificate is attached and of each and every of said papers.

SEABURY G. QUINN.

Subscribed and sworn to before me this 22d day of December, A. D. 1908.

[SEAL.]

HAZEL NORDEMAN,
Notary Public, D. C.

My commission will expire Nov. 1/09.

541

Ex. K.

Department of the Interior.

Commissioner to the Five Civilized Tribes.

Cherokee Allotment Contest No. 926.

ANNIE M. MARTIN, Contestant,
vs.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestee, SAMUEL BOB, by W. S. D. MOORE, next friend, Intervenor.

Land in Controversy: The N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ less 3.08 acres for the K. O. C. & S. R. R. right of way, and the N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Section 13, Township 26 North, Range 12 East of the Indian Meridian, containing 76.92 acres.

Appearances: For contestant: In person and by S. G. Magee and Geo. C. Butte, attorneys. For contestee; Jesse L. Harnage in person and by Veasey & Rowland, attorneys. For intervenor; Veasey & Rowland, attorneys.

Findings and Decision.

After the investigation of the records in the possession of this office and due consideration of the pleadings and evidence in this case, it appears as follows:

Statement of Records.

That Annie M. Martin and Jesse L. Harnage are citizens by blood of the Cherokee Nation, and that each is entitled to an allotment of the lands of said nation.

That on May 13, 1904, Jesse L. Harnage appeared at the Cherokee Land Office and made application for the land in controversy
542 herein for himself, and the same was by the Commissioner to the Five Civilized Tribes set apart to the said Jesse L. Harnage as a portion of his allotment selection.

That on May 26, 1904, Annie M. Martin appeared at the Cherokee Land Office and made application to have the land in controversy herein set apart to her as a portion of her allotment, and the same having been theretofore selected, as herein stated, the said Annie M. Martin was so notified by the Commission, and her application for said land was therefore refused.

That on May 26, 1904, Annie M. Martin, the contestant, filed herein her complaint, duly verified.

That on October 26, 1906, W. S. D. Moore as next friend for Samuel Bob filed herein his intervening petition for the purpose as shown in said petition of protecting the rights of Samuel Bob to the land in controversy pending the final determination of Cherokee Allotment Contest No. 830 entitled Heady v. Bob.

That on January 26, 1907, the application of Wallace Thursday, one of the contestees herein, for enrollment as a citizen by inter-marriage of the Cherokee Nation, having been finally denied by the Secretary of the Interior and his application to select in allotment the land in controversy herein having been accordingly cancelled, this cause was on motion of the Commissioner dismissed as to the said Wallace Thursday.

That on August 2, 1907 this cause was set for trial on September 25, 1907, at 9 o'clock A. M., and notice of contest and summons issued to the contestee.

That on August 22, 1907, return of notice of contest and summons was filed showing service on the contestee on August 19, 1907.

That on September 25, 1907, it appearing that the inter-
543 venor, herein, Samuel Bob, having been awarded the land in controversy in Cherokee Allotment Contest No. 830, the intervening petition of Samuel Bob was on motion dismissed.

That on September 25, 1907, this cause was called for trial.

Both parties appeared in person and by counsel and announced ready, whereupon the cause was heard and taken under advisement.

That on November 26, 1907, contestee filed brief herein, showing service of a copy thereof by registered mail addressed to Samuel G. Magee, attorney of record for contestant, on November 22, 1907.

That on November 29, 1907, contestant filed brief herein, showing service of a copy thereof by registered mail addressed to Veasey & Rowland, attorneys of record for the contestee on November 27, 1907.

Findings of Fact and Conclusion.

It appears from the records of this office that on May 13, 1904, Cherokee Contest Case No. 799 was instituted by Jesse L. Harnage, contestant, vs. Wallace Thursday, contestee, involving the land in contest herein, and as the citizenship of the contestee, Wallace Thursday was denied, the Commissioner on January 26, 1907, dismissed contest No. 799 and cancelled the contestee Thursday's application.

Cherokee Contest No. 926, involving the same land, was permitted to be instituted with Annie M. Martin as contestant, and Jesse L. Harnage and Wallace Thursday as contestees, and Samuel Bob, intervener. The contest as to Wallace Thursday and Samuel Bob as intervener was dismissed because of the denial of citizenship of the said Wallace Thursday, and because the intervener, Samuel Bob,

had received his allotment in Cherokee Contest No. 830 of 544 Heady v. Bob, leaving Annie M. Martin, contestant, and

Jesse L. Harnage, contestee, the sole parties to this contest. The further consideration of this cause will be conducted with the latter named parties of Martin and Harnage as the sole parties.

The record in this case shows that the contestant, Annie M. Martin, is the daughter of Wm. Bob Anson (Wild Bill) and the grand-daughter of Mary Thursday; that during her infancy, she together with her parents, resided for some time with Mary Thursday on the old home place located south and west of the land in controversy; that the contestant, Mary Thursday, her son, Wild Bill and Sam Bob were Delaware Indians and as such received certain Delaware payments; that Wild Bill died in 1889, after which such payments as were due him as a Delaware were paid to Mary Thursday and that certain small payments which were due to the contestant were also paid said Mary Thursday.

It further appears that upon the contestant's leaving the home of Mary Thursday she resided with several Cherokee families until about 1899, when she married one Martin; that shortly thereafter, the contestant and her husband visited Mary Thursday, at which time the latter ascertained that contestant had not secured any land for future allotment. Desiring that the contestant should be provided for and realizing her indebtedness to contestant on account of having received certain Delaware payments due contestant and her father and having sufficient land for allotment of her family she gave to the contestant the right to allot the land in controversy

which was a part of a 200 acre farm, purchased by Mary Thursday in 1885 with funds belonging to herself and Sam Bob, a brother of contestant. It was understood at the time that Mary Thursday was to hold said land until time for allotment, which was done.

545 The fact that no rent was exacted during said time does not show want of good faith, nor was it necessary as between grandmother and grand-daughter that a valuable consideration exist. Considering the relationship, natural love and affection was sufficient to support a transaction of this character. The contention is also made that Mary Thursday was at said time of unsound mind. This, however, is not established, and the fact that in 1906, she was adjudged insane and a guardian appointed does not have any bearing upon her insanity at the time of the above transaction.

Wallace Thursday, who was called as a witness for the contestee to show that no such transaction, as above related, took place, is an unreliable witness, as he was impeached by his own testimony and shown that he is unworthy of belief. He admitted that he had offered to testify for the party who would pay him the most money and evidenced in every way his incredibility.

It appears that Wallace Thursday on June 21, 1905, acting in his individual capacity agreed with the contestee, among other things, that he would transfer to the contestee the improvements upon the land in contest in consideration of Wallace Thursday receiving individually the income of one of the best wells to be afterward sunk upon said land, and the further consideration of a five year agricultural lease from the contestee to said Wallace Thursday, the contract to be binding in the event of the denial of the citizenship of said Wallace Thursday and the finding in favor of contestant in Cherokee Allotment Contest No. 830 of Heady v. Bob, otherwise the contract to be void.

It nowhere appears that Wallace Thursday, who is a non-citizen, had any power or authority from his wife to traffic in any improvements held by her or Sam Bob.

546 The records of this office show that on June 30, 1905, Wallace Thursday filed with this office a petition on behalf of Mary Thursday and Sam Bob, to have the land herein designated as the improved surplus holdings of the above named persons, under the Act of Congress approved March 3, 1905. Owing to the pendency of the contest of Heady v. Bob, Cherokee No. 830, the Commissioner suspended action thereon until said case should be finally decided. On December 5, 1907, Wallace Thursday, as legal guardian for Mary Thursday, and on December 16, 1907, Sam Bob for himself, he having become of age, by motion withdrew said petition.

The Commissioner is of the opinion that in the year 1905, Wallace Thursday had no power as an individual, or as guardian, to invest the contestee with any title to the improvements upon the land in contest; that any improvements made by the oil company for contestee in placing posts upon the same where the land was already inclosed and contained sufficient improvements to segregate it

from the public domain for the Contestant, were purely voluntary and could not be evidence of possession; that the contestant, through her grandmother had been in possession of the land in contest since about the year 1899.

It appears that in November, 1906, said Wallace Thursday became solicitous about his said contract with the contestee and believing there was a possibility of his losing the consideration which he had reserved to himself personally, he executed some kind of an instrument which is not in evidence, to the contestant, which the contestant claims was a bill of sale for the improvements upon the land in controversy. This instrument did not strengthen the contestant's title to the land in contest and can only be construed as evidence of his intention when he found out that he might not receive a personal benefit to himself to carry out and perform
547 the wishes of his wife made years before, of which he probably knew, but for reasons best known to himself he denied upon the trial of knowing.

The contestee has never acquired any right to the improvements, by reason of a transfer, nor has he ever been in possession, and his right to be awarded the land in controversy rests solely upon his prior filing.

The Commissioner is, therefore, of the opinion that the land in controversy should be awarded to the contestant.

Judgment.

It is, therefore, ordered and adjudged that the northeast quarter of the southwest quarter, less three and eight one-hundredths (3.08) acres for the K. O. C. & S. R. R. right of way, and the northwest quarter of the southeast quarter of Section 13, Township 26 North, Range 12 East of the Indian Meridian, containing seventy-six and ninety-two one-hundredths (76.92) acres, and being the land in controversy in Cherokee Allotment Contest No. 926, be awarded to Annie M. Martin, the contestant therein; that Cherokee allotment certificate No. 65721 and homestead certificate No. 39015 heretofore issued to Jesse L. Harnage, the contestee therein, in so far as they describe the land in controversy herein, be, and the same are, hereby cancelled, set aside and held for naught; and that the records of the Cherokee Land Office be made to conform in all things to this decision.

(Signed)

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.

Dated this 2nd day of January, 1908.

548

Ex. L.

Land 18887-1908.

J. D. C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, May 25, 1908.

Subject: Cherokee Allotment.

Contest No. 926.

Martin vs. Harnage.

Cherokee Allotment Contest.

#926.

ANNIE M. MARTIN, Contestant,

vs.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestees; SAMUEL
BOB, by W. S. D. MOORE, as Next Friend, Intervenor.

Land in controversy: The N. E./4 of the S. W./4 less 3.08 acres
for the K. O. C. & S. R. R. right of way and the N. W./4 of S. E./4
of Section 13, Township 26 North, Range 12 East of the Indian
Meridian containing 76.92 acres.

Filed Jan. 27, 1910. L. G. Disney, Clerk U. S. Circuit Court,
Eastern Dist. Okla.

Commissioner to the Five Civilized Tribes, Muskogee, Okla.

SIR: The office is in receipt of your communication of March 13,
1908, transmitting the record on appeal from your decision of Janu-
ary 2, 1908, in the above-entitled a numbered contest.

The record shows that all the parties herein except Wallace Thurs-
day are citizens by blood of the Cherokee Nation, and as such are
entitled to an allotment of the lands of that Nation.

Jesse L. Harnage made a tentative selection of the land in con-
troversy May 13, 1904. On May 26, 1904, Annie M. Martin applied
for the same land, but her application was refused as it had
549 been previously selected. On the same day she filed her duly
verified complaint setting up ownership of improvements on
the date of the contestee's filing.

W. S. D. Moore as next friend for Samuel Bob filed an interven-
ing petition on October 26, 1906, to protect the rights of Samuel Bob
to the controverted land pending the final determination of Cherokee
Allotment Contest #830, entitled Heady vs. Bob.

On motion of the Commissioner this cause as to Wallace Thurs-
day, one of the contestees, was dismissed on January 26, 1907, his
right to share in the distribution of Cherokee tribal lands having
been denied by the Secretary of the Interior. The intervening peti-

tion of Samuel Bob was also dismissed on September 25, 1907, the land which completed his allotment having been awarded to him in Cherokee Allotment Contest #830.

This cause was regularly heard on September 25, and 26, 1907. A brief was filed by contestees and contestant respectively on November 26 and 29, 1907. Your decision in favor of the contestant was rendered on January 2, 1908, and on January 10, 1908, notice thereof and of the contestee's right of appeal within thirty days was sent by registered mail to counsel for both parties.

On January 30, 1908, the attorneys of record for the contestee filed an appeal alleging error in your finding that at the time of the contestee's filing on the land in controversy the contestant was the owner of the improvements thereon, insisting that the land should have been awarded to the contestee by virtue of his prior selection. On the same day the contestee Jesse L. Harnage in support of the motion of his attorneys, filed a supplemental appeal with numerous specifications of error, alleging that the only valid transfer of the land in question could be made under the supervision of a probate court having jurisdiction of the parties and their property, 550 and that your decision was contrary to law.

For the reasons heretofore mentioned this cause was dismissed as to Wallace Thursday and Samuel Bob, leaving Annie M. Martin, Contestant, and Jesse L. Harnage, Contestee, the sole parties in interest.

From the evidence adduced it is shown that the improvements on the land in controversy consist of a dwelling house, the entire tract of 80 acres being enclosed with a substantial fence, and about 45 acres in cultivation. The land at issue is a part of an improved farm, the improvements on which were purchased in 1893 by Mary Anderson, now Mary Thursday, from the firm of Johnson and Wheeler for a consideration of eight hundred dollars.

The contestant herein is the daughter of Bob Anderson (Wild Bill) and granddaughter of Mary Thursday, and sister of Sam Bob, who was awarded the land in Cherokee Allotment Contest #830, entitled Ella E. Heady vs. Samuel Bob. In early childhood the contestant Annie M. Martin lived with her parents and brother at the home of her grandmother Mary Thursday, who is a Delaware Indian received certain payments from the Government for herself and also for her son Bon (Wild Bill) and his two children. The contestant after the death of her father in 1889 was taken from the home of her grandmother and resided for some years with the family of one Frenchman and others. It is clearly shown that Frenchman's object in assuming control over this child when she was only about 10 years of age, was to secure some of the larger payments due to each Delaware Indian.

About the year 1899 Mary Thursday gave her granddaughter after her marriage to Martin the right to select the land in controversy which joins the allotment of her brother Sam Bob. 551 Wallace Thursday, a non-citizen negro and the step-grandfather of the contestant in his testimony makes a sweeping denial of this gift and in fact everything favorable to the contestant.

Your finding that he is an unreliable witness and unworthy of belief is entirely just, since the record in the case shows that he offered to testify for the party who would pay him the most money, and in the beginning of his testimony sought to convey the idea that the contestant was of illegitimate birth, and therefore not the daughter of Wild Bill.

On June 21, 1905, Wallace Thursday as guardian for his wife and her grandson, both of whom have received their allotments, agreed to transfer the improvements on the land in controversy to the contestee for the income of one of the best oil wells to be afterwards sunk on the land, and a five-year agricultural lease. Previous to his selection of the land the contestee placed a row of posts around the controverted tract when, as a matter of fact, the improvements heretofore referred to were already there. The claim of the contestee, however, is not based on this action, nor any control over the land, but in most part on his prior selection and the above agreement with Wallace Thursday.

Counsel for the contestee insist with much emphasis that as Mary Thursday is insane and the greater part of the money with which the farm was originally purchased was derived from the Delaware payments of Sam Bob, it follows that no rights accrued to the gift from her grandmother. In this view the office does not concur. While Mary Thursday received only small payments from the contestant and her father, it is equally true that Wallace Thursday made no protest when the contestant, at the time an orphan of tender years, was removed from the home of her grandmother through the avarice of Frenchman, and thus throughout the period of her life was dependent on the charity of strangers.

552 The evidence throughout shows that the mental faculties of Mary Thursday were not so much impaired that she could not direct her domestic affairs, and to some extent perform her household duties. It does not follow that the degree of her mental disorder was such that she was unable by reason of insanity to furnish an allotment to her granddaughter. Without doubt, she was capable of transferring these improvements at that time, and under such circumstances natural love and affection was all sufficient to support such a transaction.

In the Chickasaw case of Kaney vs. Kemp, #1069, it is held:

As between members of the same family a verbal contract or understanding as to the ownership of improvements is uniformly held good.

The approval by the United States Court of the contestee's alleged purchase is not final in determining rights of the parties in dispute, for under Section 24 of the Act of July 1, 1902, (32 Stat. L., 641) the Commission, subject to review by the Department, has exclusive jurisdiction to determine the rights of parties in the matter of allotment contests. The doctrine of tenancy in common invoked on behalf of the contestee is not in point.

Subsequent to the oral agreement with Mary Thursday in 1899, the contestant was in possession of the improvements on the land in

controversy through her grandmother and later in her own person, and was invested with indefeasible rights.

In the case of Wright vs. Homma, Chickasaw #86, it is laid down:

Where the evidence shows that the contestant was in possession of the land when the contestee filed, and that his equities were greater than those of the contestee, he should be awarded the land.

After a careful review of the testimony herein and the examination of the record in Cherokee Contest #830, Heady vs.

Bob, the office is convinced that the claim of the contestee is wholly without merit.

Your decision of January 2, 1908, awarding the land to Annie M. Martin, the contestant, is accordingly affirmed.

You are requested to notify the interested parties hereof and advise them of their further right of appeal.

Very respectfully,

C. F. LARRABEE,
Acting Commissioner.

Ex. M.

Department of the Interior, Commissioner to the Five Civilized Tribes.

Cherokee Allotment Contest No. 926.

ANNIE M. MARTIN, Contestant,
vs.
JESSE L. HARNAGE, Contestee.

Motion for Appeal from Decision of Commissioner of Indian Affairs.

Comes now the contestee by James K. Jones and Veasey & Rowland, his attorneys, and respectfully moves the Honorable Commissioner to the Five Civilized Tribes for an appeal from the decision rendered herein by the Commissioner of Indian Affairs on the 25th day of May, 1908, in letter "Land 1887-1908-J. D. C." And for reason therefore assigns the following errors in said decision:

1. That the Honorable Commissioner of Indian Affairs erred in finding that in 1899 Mary Thursday was the owner of the improvements upon, and the possessory right to the specific land in controversy, and thereby qualified to transfer said land to the contestant at said time.

554 2. That the Honorable Commissioner of Indian Affairs erred in finding that in 1899 Mary Thursday gave or transferred the improvements upon and the right of possession to the specific land in controversy to the contestant.

3. That the Honorable Commissioner of Indian Affairs erred in finding that in 1899 the contestant became vested with the possession of the land in controversy either through Mary Thursday or other-

wise, and that such possession continued up to the time of the contestee's filing on the land in controversy.

4. That the Honorable Commissioner of Indian Affairs erred in finding that in 1899 or at any other time referred to with respect to the alleged gift or transfer of the land in controversy to the contestant by Mary Thursday that said Mary Thursday was a person competent under the law to contract.

5. That the Honorable Commissioner of Indian Affairs erred in finding that the alleged transaction in 1899, or any other transaction between said Mary Thursday and the contestant constituted a gift of the improvements upon the specific land in controversy and the possession thereof to the contestant.

6. That the Honorable Commissioner of Indian Affairs erred in rejecting in toto the testimony of Wallace Thursday.

7. That the Honorable Commissioner of Indian Affairs erred in not awarding the land in controversy to the contestee by virtue of the prior selection thereof by him.

8. That the Honorable Commissioner of Indian Affairs erred in not awarding the land in controversy to the contestee by virtue of his contract with Wallace Thursday as the legal guardian of Mary Thursday, an insane person, and as the legal guardian of
555 Samuel Bob, a minor, entered into immediately preceding contestee's selection of the land in controversy.

9. That the Honorable Commissioner of Indian Affairs erred in not concluding as a matter of law that the land in controversy should be awarded to the contestee by virtue of said contestee's having done everything in his power to purchase the land in controversy as the excess improvements of Mary Thursday and Samuel Bob, Delaware Cherokee Citizens, as prescribed by the then existing laws and the regulations of the Secretary of the Interior prescribed thereunder, the consummation of which purchase was defeated by the unlawful and unwarranted action of the Commissioner to the Five Civilized Tribes in refusing to order a hearing from which certification of said land as said excess holdings might be made.

10. That the Honorable Commissioner of Indian Affairs erred generally in not finding from the evidence and the law of this case that the land in controversy should be awarded to the contestee.

And in furtherance of this motion and in order that the exact rights of the contesting parties may be determined from the record in this case, including the record in the case of Heady v. Bob, which was made a part hereof, the contestee respectfully requests the Honorable Secretary of the Interior to make the following findings of fact and conclusions of law in this action:

Findings of Fact.

First. That in 1893 the land in controversy, together with about 120 acres of land contiguous thereto, was purchased for Mary Thursday, then a person of unsound mind, and Samuel Bob, then a minor, by Wallace Thursday, the husband of Mary Thursday, and the step-grandfather of Samuel Bob, with Eight Hundred Dollars of the Dela-

556 were payment moneys of Mary Thursday and Samuel Bob, the greater part of which purchase money was paid out of the estate of said Samuel Bob.

Second. That from the date of said purchase until at least the selection of a portion thereof in allotment by Samuel Bob, said entire farm, embracing the eighty acres in controversy, remained the joint property of said Mary Thursday and said Samuel Bob.

Third. That it does not appear from a fair preponderance of the evidence in this case, including the evidence in the case of Heady v. Bob made part hereof, that in 1899 Mary Thursday gave the improvements upon the specific land in controversy to the contestant.

Fourth. That at the time of the alleged gift from Mary Thursday to the contestant the mental condition of said Mary Thursday was such that she was not competent in the eyes of the law to dispose of her property.

Fifth. That the contestant has never been in the lawful possession of the specific land in controversy, either in her own person or through Mary Thursday, nor have any other acts occurred with respect to said land evidencing a delivery of the possession thereof from said Mary Thursday to the contestant.

Sixth. That said Samuel Bob has never transferred such interest as he owned in the improvements on the land in controversy to the contestant.

Seventh. That the contestee has the prior selection of said land in allotment.

Eighth. That said selection was based upon an agreement between Wallace Thursday, the legal guardian of said Mary Thursday and of Samuel Bob, and the contestee, the purpose of which agreement was to protect Samuel Bob and Wallace Thursday in their respective allotments, provided Wallace Thursday was enrolled as a citizen of the Cherokee Nation.

557 Ninth. That Mary Thursday and Samuel Bob are Delaware Cherokee citizens of the Cherokee Nation, and were duly enrolled as such during the time that such citizens had the right under the regulations of the Secretary of the Interior to dispose of their excess improvements upon land in the Cherokee Nation.

Tenth. That Wallace Thursday as the legal guardian of Mary Thursday and Samuel Bob, filed a petition with the Commissioner to the Five Civilized Tribes for a hearing in order that the improvements upon the land in controversy might be certified as the excess Delaware surplus of said Mary Thursday and said Samuel Bob, but said Commissioner to the Five Civilized Tribes failed and refused to accord said hearing.

Eleventh. That the United States Court for the Northern Judicial District of the Indian Territory, sitting in probate at Nowata, Oklahoma, by a proper order directed Wallace Thursday as the legal guardian of said Mary Thursday and said Samuel Bob, to dispose of the improvements upon the land in controversy to the contestee according to the regulations of the Department of the Interior with respect to the sale of improvements by Delaware Cherokee Citizens upon their excess or surplus land.

Conclusions at Law.

First. That at all times from July, 1893, until the time of contestee's filing, or until the United States Court by its proper order directed the sale of the improvements upon the land in controversy to the contestee, Mary Thursday and Samuel Bob were tenants in common of the improvements upon the land in controversy, said Samuel Bob owning approximately an undivided three-fourths interest in said improvements.

Second. That said parties were such tenants in common with respect to the improvements on said land at the time of the alleged gift thereof to the contestant.

558 Third. That conceding for the sake of argument that Mary Thursday made a valid gift of the improvements upon the land in controversy to the contestant in 1899, such gift would not carry with it the undivided three-fourths interest therein of Samuel Bob, then a minor.

Fourth. That conceding for the sake of argument that Mary Thursday did go through the formality of giving the improvements upon the land in controversy to the contestant in 1899, the condition of the mind of said Mary Thursday was such that under the law no title thereto passed from said Mary Thursday to the contestant.

Fifth. That there was no such delivery of possession of the land in controversy and of the improvements thereon as would constitute a gift thereof.

Sixth. That the burden of proof is upon the contestant, and the contestant must prove her chain of title, upon failure of which the land in controversy should be awarded to the contestee by virtue of the prior selection thereof by him.

Seventh. That the necessary elements of the contestant's case are the sole and exclusive ownership and possession of the land in controversy by Mary Thursday at the time of the alleged transfer in 1899; the competency at law of said Mary Thursday at said time; proof of an actual gift of the improvements upon the land in controversy by said Mary Thursday to the contestant, coupled with such acts as would constitute a delivery of the improvements at said time.

Eighth. That said chain of title was not shown by the contestant by a clear preponderance of the evidence, and that the land in controversy should be awarded to the contestee therefore, by virtue of his prior filing alone.

Ninth. That the agreement with Wallace Thursday, as the 559 legal guardian of Mary Thursday and Samuel Bob, in pursuance of which the contestee filed, was sufficient to support the title of the contestee as against the alleged title of the contestant.

Tenth. That the attempt on the part of Wallace Thursday as guardian of Mary Thursday and Samuel Bob to have the improvements upon the land in controversy certified as the surplus improvements of said Mary Thursday and said Samuel Bob, and the subsequent order of Court directing the sale thereof to the contestee in conformity with the regulations of the Department of the Interior with respect to improvements of this character, amounted in equity to a sale thereof under the laws and the regulations providing for

the sale of surplus improvements of Delaware Cherokee Citizens, and that accordingly the land in controversy should be awarded to the contestee.

Respectfully submitted.

(Signed)

JAS. K. JONES.

VEASEY & ROWLAND.

STATE OF OKLAHOMA,

Washington County, ss:

Lucy M. Jennings on oath states that she served a true and correct copy of the foregoing paper upon George C. Butte attorney for the contestant in the above entitled cause, by sending same by registered mail to said George C. Butte at Muskogee, Oklahoma, on the 23rd day of June, 1908, as shown by registry receipt attached hereto.

(Signed)

LUCY M. JENNINGS.

Subscribed and sworn to before me this 23rd day of June, 1908.

(Signed)

ETHEL KEHRER,

Notary Public.

My commission expires June 25, 1910.

(Registry Receipt No. 5082 dated June 23, 1908, and signed "Postmaster, per H. A. Hatch, attached.)

560 Department of Interior, Office of Indian Affairs, Washington.

General Allotment Contest No. 926.

ANNIE M. MARTIN, Contestant,

vs.

JESSE L. HARNAGE, Contestee; SAMUEL BOB, by W. S. D. Moore,
His Next Friend, Intervenor.

Motion for Appeal from the Decision of the Office of Indian Affairs.

Comes now the Contestee, Jesse L. Harnage, and files this his motion for appeal, supplemental to and in addition to the motion of appeal to be filed by his attorneys of record, from the decision of the Hon. Commissioner of Indian Affairs, and for grounds of motion, assigns the following specifications of error in the opinion of the Hon. Commissioner, as follows, to-wit:

First. The Hon. Commissioner erred in finding that Mary Anderson, now Mary Thursday purchased the improvement on the land in controversy;

Second. The Hon. Commissioner erred in finding that Mary Thursday gave the contestant the right to select the land in controversy;

Third. The Hon. Commissioner erred in finding that Wallace Thursday offered to testify for the side that would pay him the most money;

Fourth. The Hon. Commissioner erred in finding that Wallace Thursday is wholly unworthy of belief;

Fifth. The Hon. Commissioner erred in finding that the contestee based his claim on, in most part, his prior selection of the land and the agreement with Wallace Thursday;

Sixth. The Hon. Commissioner erred in not finding that
561 the Contestee based his claim on his actual control over the land, his placing improvements on the land, his entering into lawful and peaceful possession of the land before filing, his purchase of the improvements on the land under the orders — court under the Delaware Improvement act, Act of Congress March 3rd, 1904, and every fact developed on the hearing that would be favorable to his claims to the land;

Seventh. The Hon. Commissioner erred in not finding that Mary Thursday was insane at the time of the alleged gift to the Contestant;

Eighth. The Hon. Commissioner erred in not finding that the improvements on the land in controversy were purchased with the money of Sam Bob and Mary Thursday, more than three-fourths of which was the money of Sam Bob;

Ninth. The Hon. Commissioner erred in finding that Mary Thursday was not insane, because she could "to some extent perform her household duties, and that her mental faculties were not so impaired that she could not direct her domestic affairs;"

Tenth. The Hon. Commissioner erred in finding that the United States Court for the Northern District of the Indian Territory had no jurisdiction to make the orders of court offered in evidence in support of the claims of the contestees;

Eleventh. The Hon. Commissioner erred in finding that the doctrine of tenancy in common invoked on behalf of the contestee was not in point;

Twelve. The Hon. Commissioner erred in finding that the Contestant was in possession of the improvements before the oral agreement with Mary Thursday in 1899 and through her grandmother, and later in her own possession;

Thirteenth. The Hon. Commissioner erred in not finding
562 that the Contestee was in possession of the improvements on the land in controversy before he made application to file on the land in controversy.

Fourteenth. The Hon. Commissioner erred in not finding that the Contestee was an innocent purchaser of the improvements on the land in controversy, from the guardian of Sam Bob and Mary Thursday;

Fifteenth. The Hon. Commissioner erred in not finding that the Commissioner to the Five Civilized Tribes erred in not segregating the improvements on the land in controversy under the Act of Congress of March 3rd, 1904, upon the petition of their legally appointed guardian, acting under the orders of the proper United States Court;

Sixteenth. The Hon. Commissioner erred in not finding that when the Commissioner to the Five Civilized Tribes, refused to segregate

the land within the time limit, that the land in controversy became public domain;

Seventeenth. The Hon. Commissioner erred in not finding as a matter of law, that when the Contestee and the legal guardian of the two incompetents Sam Bob and Mary Thursday, had done everything that the law required them to do to perfect a sale of these improvements under the Act of Congress providing for the sale of the surplus improvements of the Delawares, and the Commissioner to the Five Civilized Tribes refused to make, even a tentative segregation of the improvements, that the improvements on the land stood sold to the contestee under the orders of court authorizing the guardian to sell the improvements to the Contestee, as provided by law;

Eighteenth. The Hon. Commissioner erred in not finding as a matter of law, that, if the land became public domain, after the expiration of the time within which it could be segregated and
563 sold as a Delaware surplus, and it was not so sold, that the contestees had the prior right to the improvements on the land by virtue of purchase and possession, and prior to filing.

Nineteenth. The Hon. Commissioner erred as a matter of law in not finding that the improvements placed on the land by the Contestee before application for the selection of the land, gave him the prior right to the land, when it became public domain by limitation.

For these grounds of error the Contestee prays an appeal from the decision of the Hon. Commissioner of Indian Affairs to the Hon. Secretary of the Interior.

(Signed)

JESSE L. HARNAGE,

Contestee.

-VEASEY AND ROWLAND,

Att'ys for Contestee.

NOTE.—The Hon. Commissioner is requested to hold the papers in the case for the filing of briefs by the attorneys for the Contestee. Copy of this motion will be mailed to Contestant at Bartlesville, for the reason that the Contestee was advised by letter of May 25th, 1908, from the Hon. Commissioner of Indian Affairs, by his chief clerk, F. M. Conser, that the attorney of record Mr. Butte of Muskogee, had not filed a reply brief in this case, and for the further reason that the Contestee has been informed that the said attorney is no longer connected with the case. It would seem from the fact that he took no notice of the appeal that he is no longer connected with the case.

(Signed)

JESSE L. HARNAGE,

Contestee.

564

EX. N.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, Oct. 10, 1908.

D-4719.

68951.

Office of Indian Affairs,
Received,
Oct. 14, 1908.

Cherokee Allotment Contest No. 926.

ANNIE M. MARTIN, Contestant,

v.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestees; SAMUEL
BOB, by W. S. D. MOORE, His Next Friend, Intervener.

Land in controversy: The N. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ less 3.08 acres for the
K. O. C. & S. R. R. right of way, and the N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$
Sec. 13, T. 26 N., R. 12 E., I., M., containing 76.92 acres.

Commissioner of Indian Affairs.

SIR: Jesse L. Harnage has appealed from your decision of May
25, 1908, affirming the decision of the Commissioner to the Five
Civilized Tribes of January 2, 1908, in favor of Annie M. Martin,
the contestant in the above entitled case.

Originally Wallace Thursday and Samuel Bob were parties to
this contest but the former was denied enrollment as a citizen by
intermarriage of the Cherokee Nation, while the allotment rights
of the latter have been heretofore satisfied by the selection of an-
other tract. Accordingly, as the matter comes before the Depart-
ment, the said Martin and Harnage are the only parties in interest.
May 13, 1904, the contestee, Harnage, made application for the
land in controversy. Thirteen days later application was made
by Annie M. Martin to select the same tract for her allotment.

Both parties are entitled to share in the lands of the Cher-
okee Nation, the former is enrolled as a $\frac{1}{8}$ -blood Cherokee;
the latter is a descendant of the Delaware people. Her
quantum of Indian blood appears upon the approved rolls as a $\frac{1}{2}$,
but the testimony in this case shows that she is a full sister of the
Samuel Bob who is enrolled as a full-blood Indian.

The land claimed by contestant is part of a large tract known
as the Thursday place, held in 1904 and for several years prior
hereto by a family of which her grandmother, who is a registered
Delaware, is the Indian head.

The northern portion of said place was acquired by the Thurs-
day family about the year 1893 through purchase of improve-
ments thereon as well as the possessory right thereto in which were
invested the money of Mary Thursday and her grandson Samuel

Bob. The southern portion was held and occupied by the family for several years prior to 1893 but whether obtained through purchase or original segregation the record does not disclose. After 1893 the two tracts taken as a whole were held by the family collectively as one place.

In early childhood the contestant became a member of the Thursday household. She and her brother together with their parents made their home upon the original place with their grandmother and one Wallace Thursday. The last named, after living for a time in the household, became the husband of Mary Thursday.

The contestant's parents both died prior to 1890, but she and her brother continued, as before, to make their home with Mary Thursday who seems in all respects to have stood in the relation of a parent to them. About the year 1891 contestant was removed by force of undue influence to the home of a Delaware named Frenchman. There she was kept until the Delaware payments of 1891 and 1893, averaging over \$500.00 each, were paid* to the members of the tribe. The amounts due her were collected by said

566 Frenchman and appropriated to his own uses.

After living at Frenchman's place a few years the contestant was sent away to school at the expense of the Government. Subsequently she returned to the vicinity of her home where she supported herself by working for her neighbors. Later, in November of 1898, when she was about 18 years old she married one George Martin, with whom she has since resided in and near Bartlesville, Oklahoma.

During the period when contestant and her brother were residing in the home of their grandmother, the latter collected various Delaware payments due them as members of the tribe. She also collected one payment after their father's death due them as his heirs. These sums were used to assist in establishing and supporting the home.

It further appears that prior to 1904, the contestant was informed time and again by Wallace and Mary Thursday, in whose physical possession the farm remained, that she had an interest in the Thursday holdings and was entitled to share therein as one of the family and because of the fact that the said payments in which she had an interest were collected by her grandmother. On one occasion shortly after her marriage, she was given positive assurance to the effect that she was to have a portion of the land. Like information was apparently given her a few days before she made application for the tract, and, on November 21, 1906, Wallace Thursday executed a paper purporting to be a conditional relinquishment to her of his interest in the improvements on the specific tract in controversy.

Taking up now the other side of the case it is found that the contestee, Mr. Harnage, claims the land by reason of (a) priority of application, (b) improvements resulting from his own

567 labor, (c) purchase of improvements already upon the land, and (d) possession through tenants.

Prior to making application for the land Harnage was a stranger

to it. He had never lived upon the place and had no claim thereto by reason of family connections or otherwise. The opportunity to file thereon was brought to his attention by Mr. James A. Veasey, attorney for the Delokee Gas and Oil Company. At the time Veasey and Harnage had law offices in the same building, in Tablequah, some distance from the land. The former was engaged upon a plan to secure oil leases for said company upon the allotments of Sam Bob and Mary Thursday and upon the land in controversy. His plans were effective as to the first two tracts by reason of the influence which the company was able to bring to bear upon the said Wallace Thursday, who, with its assistance, was appointed as guardian of his wife, Mary Thursday, adjudged to be insane, and his step-grandson, the said Samuel Bob, who was a minor. But as the tract lying between their allotments had not been selected it became necessary to the success of the plans of the Delokee Company that some one should file thereon who would cooperate with it. Accordingly Veasey advised Harnage of the situation and the latter agreed to file upon the land, with the understanding that he was to execute a lease immediately in favor of said company covering the tract. This arrangement was made with him on condition that he would relinquish his claim in case Samuel Bob or Wallace Thursday might need the land, it being thought possible that the former might lose the land involved in another contest case, that of Heady v. Bob, and that the latter Thursday, whose claim to Cherokee citizenship, was of doubtful force, might after all succeed in securing enrollment. Harnage foresaw that, to use his own words, he might be left in the position of "holding an empty bag."

Therefore an additional stipulation was made that, in case he should fail to secure the land, under the proposed plan, stock in the Delokee Gas and Oil Company should be issued to him in the value of \$5,000.00 to compensate him for his loss.

Shortly before making formal application for the land at the land office the contestee went upon the tract and, with the assistance of members of the Delokee Company, spent several hours in "settling posts, purchased by said company, presumably for the purpose of defining the boundaries of the place as a prospective allotment.

May 29, 1905, Wallace Thursday, as guardian of Samuel Bob and Mary Thursday, executed a bill of sale, consideration \$250.00, transferring or attempting to transfer to Harnage all right, title and interest of said persons in the land in question. This contract contained two conditions, (1) that in case Thursday should secure enrollment Harnage should reconvey the place to him, and (2) that in case Thursday should fail to secure enrollment, Harnage was to grant to him a life estate in the surface of the land for farming purposes, and, in case productive oil or gas wells should be drilled upon the land, the royalty accruing from one such well to be enjoyed by Thursday for his lifetime. This contract agreed in terms substantially with an oral agreement between Harnage and Thursday, entered into about the time that Harnage became a party to the plans of the Delokee Company.

June 10, 1905, Harnage executed a five years' lease upon said tract in favor of Thursday. By this lease it was intended to make the land pay for itself, i. e., Thursday was to retain possession until the rents should cover the purchase price. Thereby Harnage was also enabled to lay claim to occupancy and possession of the place through Thursday as his tenant.

569 Both of said contracts involved trust property but neither was entered into with approval or order of court.

June 21, 1905, Mr. Veasey, acting as the attorney for Wallace Thursday, secured an order from the probate court authorizing and directing the latter to dispose of the interest of his said wards in the improvements on the lands in controversy to the contestee (Harnage) at a price to be determined by the person appointed by the President to the improvements of Delaware-Cherokee citizens. Such sale was to be conducted in accordance with the regulations of the Department and would, if properly carried out, have given the purchasers the right to select the land as his allotment.

June 21, 1905, Harnage and Thursday entered into a third contract whereby Thursday conveyed to Harnage all right, title and interest claimed by him in the improvements upon said land, and Harnage agreed to select the same as his allotment. In this contract it was also agreed that, in the event Samuel Bob should lose the land involved in said contest case of Heady v. Bob, Harnage was to relinquish in favor of Samuel Bob all claim to the land involved in this contest. It was provided further that in case Thursday should establish citizenship in the Cherokee Nation and in the event that Samuel Bob should succeed in the case of Heady v. Bob, Harnage should relinquish to Thursday all interest in the land claimed by Harnage and Martin. A further condition that, in the event that Samuel Bob should prevail in the contest of Heady v. Bob, and, at the same time, Thursday should fail to establish his citizenship, Harnage was to grant to Thursday the use, rents and profits of the surface of said land and the royalty accruing from one oil and gas well thereon for Thursday's lifetime. (See Part 5, Record in case of Heady v. Bob.)

It will be observed that said contracts of May 29 and June 570 21, 1905, while not identical, were in some respects similar.

There is nothing to show that the court, in authorizing and directing Thursday to dispose of the improvements supposed to belong to his wards, had any information whatever that there was an independent contract between Thursday and the proposed vendee whereby the guardian was to receive a much larger consideration than the real parties in interest.

Application was made to the Commissioner to the Five Civilized Tribes to certify to the proper officer for appraisal and sale the improvements upon the land described herein, but the Commissioner deferred action in the matter pending the outcome of the Heady-Bob contest, being governed evidently by the belief that Samuel Bob might possibly need said land for his allotment as well as by the desire to protect the probable rights of Annie Martin therein.

The Department concludes that the contestant, Annie Martin,

became a member of the Thursday family in early childhood and that she continued to be such until her marriage in 1898. Part of this time, it is true, her residence with the family was constructive only, but throughout the whole of that period she was undoubtedly, in legal contemplation, a member of said family. Surely there is no presumption of law that her interest in the old Thursday place ceased merely because of her abduction therefrom and the unlawful appropriation by others of money due her. Of course her absence, while attending school, is not to be construed in any way to the prejudice of her rights as a member of the family or to militate against her interest in the Thursday holdings.

Before her marriage the act of June 28, 1898 (30 Stat. 495), became law. Section 11 of said act reads in part as follows:

571 Provided further, That whenever it shall appear that any member of the tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires.

This act guaranteed to each Indian citizen the right to select in allotment* his home. That right was preserved, not only to the head of the family but also to each person who might properly be regarded as a member of the family occupying the place. But the claim of Annie Martin to share in the lands held by the Thursday family does not rest alone upon the fact that she resided on a portion of such lands and made her home thereon. The payments due her as a member of the tribe and as the heir of her father were actually made to Mary Thursday as the head of the family. This is important because it is evidential that the home of the latter was also the home of Annie Martin, and for the further reason that it tends of itself to show that said home was maintained and made possible by both.

That Annie Martin had an interest in the Thursday holdings, considered as a whole, was apparent, not only from her own testimony, but also from that of others. While the testimony of the various witnesses does not always agree, it is found that their points of disagreement were upon immaterial matters, and that there is a substantial agreement in their testimony as to matters of larger moment and greater importance.

Here it should be observed that there was sufficient land for all members of the family had Wallace Thursday held a portion of the place for Annie Martin instead of yielding to his avarice and selling various tracts to McDaniel, C. E. Harnage, and others. But, even as to this, it ought perhaps to be said in justice to the old man that his action was probably due to pressure brought upon him from outside sources.

Possibly he intended to make some atonement to Annie
572 Martin when he executed said relinquishment of November 21, 1906, in her favor. Said relinquishment was executed subsequent to contestee's filing and was therefore of no effect against the latter. It is regarded, however, as evidence of an intention on the part of Wallace Thursday to confer a right theretofore existing

in Annie Martin because of the relation sustained by her for years to the Thursday place.

It may be contended that contestant never actually lived upon the land, but that, if entitled to any part whatever of the Thursday farm, she should have contested with Mary Thursday the right to select the original home place. The Department finds, however, that, after the northern and southern portions of said farm were merged into one place, there was a recognized community of interest among the members of the family, growing out of their relationship and the mingling of their funds, whereby each had an interest in every part of the family holdings. It follows that when Samuel Bob elected to take his allotment in the northern part of the place and Mary Thursday to take hers in the southern part thereof, they impliedly relinquished to the contestant, i. e., to the remaining Indian member of the family their interest in the tract lying between their allotments.

Much has been said to prove and to disprove that there was a valid conveyance, by parole gift, from Mary Thursday to Annie Martin, of the possessory right to the specific tract of land involved in this controversy. But the Department finds it unnecessary to pass upon this point. Even if there had been an instrument in writing, executed by both Wallace and Mary Thursday, intended to convey the specific tract in question to Annie Martin, such instrument should be regarded merely as confirmatory of an existing right and not as evidence of a conveyance or grant of a new interest in the land; for contestant's right to a portion of the home
573 place was complete without any such conveyance. Moreover, under such circumstances it is considered that the Commissioner to the Five Civilized Tribes committed no error in declining to certify the improvements upon the land in question for appraisal and sale.

Nor can any charge of abandonment be properly urged against contestant by reason of her absence during the first years of her married life. As she was a part owner of the improvements on the place, it must be held that she remained in possession through other members of the place who remained thereon. Furthermore, it should be noted that she made no attempt to select other lands although Frenchman testified that he offered her land for an allotment located elsewhere.

At the hearing objection was made to George Martin as a witness on the ground that, under the Arkansas statutes, husband and wife are not competent to testify in cases affecting each other. The Department is not inclined to view with favor this contention. Section 22 of the Act of July 1, 1902 (32 Stat., 716) provides as follows:

Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisement and the allotment of lands.

This is not material, however, because Martin's testimony is not pivotal and its exclusion would not affect the results.

Nor should the fact that the parents of Annie Martin died when she was a child be regarded as a severance of her interest in the Thursday place. Her father undoubtedly had a possessory interest therein at his death which passed by inheritance to his children, and for this reason it should be noted that in the settlement of estates the Cherokee tribal law was particularly solicitous respecting the rights of minors and orphans.

574 In fact there is a manifest purpose running through the law to recognize family right, to protect Indian citizens in their homes and to secure to them all rights incident thereto and to enable them to so select their allotments as to include their improvements. This is evident, not only from Section 11 of the act of June 28, 1898, quoted above, but also from sections 11 and 18 of said act of July 1, 1902.

But as to the claims of Mr. Harnage the Department holds that priority of application profited him nothing, for the contestant's interest in the land was of earlier origin. The so-called improvements which he placed upon the land were put there, not with actual purpose of improving the land, but merely to lay the basis for an allotment selection; moreover, the posts which were used were furnished at the expense of the Delokee Company and not by Harnage. The alleged purchase of improvements already upon the land is without force because (1) the conveyance by Thursday was not valid, (2) because the contestant rather than Samuel Bob and Mary Thursday was entitled to claim the improvements at the time. It follows of course that the claim of possession through Thursday as tenant is also without force.

Furthermore, said contracts of May 29, June 10, and June 21, 1905, show on their faces that Thursday was in fact dealing with the improvements upon the land as if they were his own and that accordingly Harnage must have known that he was acquiring no right whatever from Thursday's wards. What could be more inconsistent in one holding a position of trust than for a guardian to execute a bill of sale of property belonging to his wards subject to the condition that, in case of the happening of a certain event, there should be a reconveyance of the property to the guardian for his personal benefit?

575 The fact that Harnage was willing to accept the benefit of a contract dealing with trust property knowing that such contract was obtained from an ignorant old man; that the latter, as nominal guardian, was representing an insane Indian woman and a minor Indian boy, and that the consideration inuring to the guardian under said contract was greatly in excess of that to be paid his wards shows conclusively that the contestee is not in a position to allege equitable rights.

Moreover the evidence is very clear that, before filing upon the lands, contestee was made acquainted with the plan of the Delokee Company to control the allotment of all three tracts and to secure leases thereon, and that he acquiesced and participated in said plan.

That Mr. Harnage consented to go into the matter on condition that he should receive \$5,000.00 worth of stock in the Delokee Com-

pany in case he should lose the land is further evidence of the character of his claim.

Premises considered the Department is convinced that the contestant is entitled to select as her allotment the land claimed by her. Clearly, the equities in the case are entirely on her side. Her interest in the land is not only greater than that of contestee but also of prior origin. The provisions of law cited above also confirm her right. On the other hand, the Department is thoroughly convinced that the contestee's claim is purely speculative and without merit; that he has at best but a naked paper title to the land, unsupported by any right or equity, and that he has permitted himself to be a party to a series of transactions which were morally wrong.

The Department concurs generally in the conclusion reached by your office and by the Commissioner to the Five Civil-
576 ized Tribes but for reasons which are not entirely the same.

Accordingly, for the reasons herein stated, the decision of your office of May 25, 1908, is affirmed and said land is hereby awarded to Annie M. Martin.

The record in the case together with the record in the Cherokee Contest case of Heady v. Bob, is returned herewith.

Very respectfully,
(Signed)

JESSE E. WILSON,
Assistant Secretary.

Ex. O.

Department of the Interior, Washington, D. C.

ANNIE M. MARTIN, Contestant,

vs.

JESSE L. HARNAGE, Contestee.

Motion for Review.

Comes now Jesse L. Harnage by his attorneys James K. Jones, Kappler & Merillat, and Veasey & Rowland, and respectfully moves the Honorable Secretary of the Interior for a review of the decision rendered herein by said Secretary on the 10th day of October, for the following reasons:

First.

That the Honorable Secretary of the Interior erred in
577 not finding as a fact:

1. That in 1893 the land in controversy, together with about One Hundred Twenty acres of land contiguous thereto, was purchased for Mary Thursday, then a person of unsound mind, and Samuel Bob, then a minor, by Wallace Thursday, the husband of Mary Thursday and step grandfather of Samuel Bob, with Eight Hundred Dollars of the Delaware Payment moneys of Mary Thurs-

day and Samuel Bob, the greater part of which purchase money was paid out of the estate of Samuel Bob.

2. That from the date of said purchase until at least the selection of a portion thereof in allotment by Samuel Bob, said entire farm, embracing the eighty acres in controversy, remained the joint property of said Mary Thursday and said Samuel Bob.

3. That it does not appear from a fair preponderance of the evidence in this case, including the evidence of Heady versus Bob, made part hereof, that in 1899 Mary Thursday gave the improvements upon the specific land in controversy to the contestant.

4. That at the time of the alleged gift from Mary Thursday to the contestant, the mental condition of Mary Thursday was such that she was not competent, in the eyes of the law, to dispose of her property.

5. That the contestant has never been in the lawful possession of the specific land in controversy, either in her own person or through Mary Thursday, nor have other acts occurred with respect to said land evidencing the delivery of the possession thereof from said Mary Thursday to the contestant.

6. That said Samuel Bob has never transferred such interests as he owned in the improvements upon the land in controversy to the contestant.

578 7. That the contestee has the prior selection of said land in allotment.

8. That said selection was based on an agreement between Wallace Thursday, the legal guardian of said Mary Thursday and of Samuel Bob, and the contestee, the purpose of which agreement was to protect Samuel Bob and Wallace Thursday in their respective allotments, provided Wallace Thursday was enrolled as a citizen of the Cherokee Nation.

9. That Mary Thursday and Samuel Bob are Delaware-Cherokee citizens of the Cherokee Nation and were duly enrolled as such during the time that such citizens had the right, under the regulations of the Secretary of the Interior, to dispose of their excess improvements upon land in the Cherokee Nation.

10. That Wallace Thursday, as the legal guardian of Mary Thursday and Samuel Bob, filed a petition with the Commissioner to the Five Civilized Tribes for a hearing, in order that the improvements upon the land in controversy might be certified as the excess Delaware surplus of said Mary Thursday and said Samuel Bob, but said Commissioner to the Five Civilized Tribes failed and refused to accord said hearing.

11. That the United States Court for the Northern Judicial District of the Indian Territory, sitting in probate at Nowata, Indian Territory, now Oklahoma, by a proper order, directed Wallace Thursday as the legal guardian of said Mary Thursday and as the legal guardian of said Samuel Bob to dispose of the improvements upon the land in controversy to the contestee, according to the regulations of the Department of the Interior with respect to the sale of improvements by the Delaware-Cherokee Citizens upon their excess or surplus lands.

That the Honorable Secretary of the Interior erred in not concluding as a matter of law:

1. That in 1893 Samuel Bob and Mary Thursday became the owners of a farm embracing about two hundred acres of land, including all of the land in controversy.

2. That the ownership of said land continued from the time of the purchase thereof until at least the time of the selection of an allotment by Samuel Bob in May, 1904, or until the rendering of the two orders in court conveying to the contestee the improvements of both Mary Thursday and Samuel Bob upon the land in controversy.

3. That said parties were such co-owners at the time of the alleged gift in the year 1899.

4. That conceding, for the sake of argument, that Mary Thursday did go through the formality of giving the improvements upon the land in controversy to the contestant in 1899, the condition of the mind of said Mary Thursday at said time was such that under the law no title thereto passed.

5. There was no such delivery of possession of the land in controversy and of the improvements thereon as would constitute a gift thereof.

6. That the burden of proof is upon the contestant and the contestant must prove her chain of title, upon the failure of which the land in controversy should be awarded to the contestee by virtue of the prior selection thereof by him.

7. That the necessary elements of the contestant's case are the sole and exclusive ownership and possession of the land in controversy by Mary Thursday at the time of the alleged transfer in 1899; the competency at law of said Mary Thursday at said time;

580 proof of an actual gift of the improvements upon the land in controversy by said Mary Thursday to the contestant, coupled with such acts as would constitute a delivery of the improvements at said time.

8. That said chain of title was not shown by the contestant by a clear preponderance of evidence and that the land in controversy should be awarded to the contestee, therefore, by virtue of his prior filing alone.

9. That the agreement with Wallace Thursday as the legal guardian of Mary Thursday and Samuel Bob, in pursuance of which the contestee filed, was sufficient to support the title of the contestee as against the alleged title of the contestant.

10. That the attempt on the part of Wallace Thursday as guardian of Mary Thursday and Samuel Bob to have the improvements upon the land in controversy certified as the surplus improvements of said Mary Thursday and said Samuel Bob, and the subsequent orders of court directing the sale thereof to the contestee, in conformity with the regulations of the Department of the Interior with respect to improvements of this character, amounted, in equity, to a sale thereof, under the laws and regulations pro-

viding for the sale of the surplus/improvements of the Delaware-Cherokee citizens, and that accordingly the land in controversy should be awarded to the contestee.

(Signed)

VEASEY & ROWLAND.
KAPPLER & MERILLAT.
JAMES K. JONES.

STATE OF OKLAHOMA,

Washington County, ss:

James A. Veasey being duly sworn says that the annexed motion for review in the case of Martin vs. Harnage is made in good faith and not for the purpose of delay, but in order that justice may be done.

(Signed)

JAMES A. VEASEY.

581 Subscribed and sworn to before me this 30th day of
October, 1908.

(Signed)

ETHEL KEHRER,
Notary Public.

My commission expires June 25, 1910.

STATE OF OKLAHOMA,

Washington County, ss:

Lucy Jennings being duly sworn on oath states that she sent a true copy of the foregoing motion for review to George C. Butte, at Muskogee, Oklahoma, by registered mail on the 30th day of October, 1908, as shown by the registry receipt attached hereto.

(Signed)

LUCY JENNINGS.

Subscribed and sworn to before me this 30th day of October, 1908.

(Signed)

ETHEL KEHRER,
Notary Public.

My commission expires June 25, 1910.

Registry receipt 10/30/08 to Geo. C. Butte attached.

(Endorsed:) 1251. Harnage vs. Martin. District Court, Washington County, Oklahoma. Filed Sep. 27, 1910. John B. Churchill.

D. O. M.

DEPARTMENT OF THE INTERIOR,

W. C. P.

L. R. S.

L. R. S.

WASHINGTON, December 5, 1908.

"D"—4719.

Land—74365—08.

Cherokee Allotment Contest No. 926.

ANNIE M. MARTIN, Contestant,

v.

WALLACE THURSDAY and JESSE L. HARNAGE, Contestees; SAMUEL BOB, by W. S. D. MOORE, His Next Friend, Intervenor.

Appeal Affirmed; Motion for Review Denied.

The Commissioner of Indian Affairs.

SIR: The Department has considered the several motions filed by Jesse Harnage and his attorneys for review of its decision rendered October 10, 1908, in the Cherokee Allotment Contest case No. 926, entitled Annie M. Martin, Contestant, v. Wallace Thursday and Jesse L. Harnage, Contestees, Samuel Bob, by W. S. D. Moore, his next friend, Intervenor, involving title to the N. E./4 S. W./4, less 3.08 acres, for the Kansas, Oklahoma Central & Southwestern Railroad right of way, and the N. W./4 S. E./4 Sec. 13, T. 26 N., R. 12 E., Indian Meridian, Cherokee Nation, containing 76.92 acres, awarding said land to the contestant.

The record shows that a hearing was duly had before the Commissioner to the Five Civilized Tribes on September 25, and 26, 1907, at which the claims of said Wallace Thursday and said Samuel Bob were dismissed and the contestant and contestee Harnage appeared in person and represented by counsel, submitted evidence in support of their respective claims. January 2, 1908, the 583 Commissioner decided in favor of the contestant, which decision was concurred in by your Office May 25, 1908, and said concurring conclusions were affirmed by the Department on October 10, 1908, in an exhaustive opinion stating fully the facts in the case and the reasons for awarding the land to the contestant.

The Department held that the contestant was equitably entitled to select in allotment said tract because "her interest in the land is not only greater than that of the contestee, but also of prior origin; that the contestee's claim is purely speculative and without merit; that he has at best but a naked paper title to the land, unsupported by any right or equity; and that he has permitted himself to be a party to a series of transactions which were morally wrong."

Under date of October 12, 1908, the contestee Harnage transmitted to the Department "a motion for review and rehearing supplemental to that filed" by his attorneys, alleging that the findings of fact in said Departmental decision were contrary to the

evidence, and the conclusions of law were in conflict with the prior rulings of the Department in Cherokee contest cases.

November 3, 1908, counsel for contestant filed a motion to dismiss said supplemental motion, because (1) it was not accompanied by an affidavit of good faith, as "prescribed by the rules of practice"; and (2) that there are no specific allegations of error in said motion.

November 5, 1908, resident counsel for contestee filed in the Department a motion for review (accompanied by an affidavit of good faith), alleging nine specifications of error, none of which contains anything new or material that was not presented to the Department and duly considered in its said decision.

584 No brief has been filed by counsel in support of said motions, nor is the conclusion of the Department concerning the bad faith of contestee as shown by the record directly challenged in the motions. It has been the uniform ruling of the Department that every allottee of Indian lands must act in good faith. The Secretary of the Interior has, by virtue of his official position, the same supervisory authority over the disposition of Indian lands that he has over the public domain of the United States. It was so held in *Knight v. United States Land Association* (142 U. S., 161, 182), wherein the court also said: "The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or disposed of to a party not entitled to it. He represents the Government which is a party in interest in every case involving the surveying and disposal of the public lands." Moreover, Section 22 of the Act of July 1, 1902 (32 Stat., 716), ratifying the agreement with the Cherokee Nation, declares that "exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior, to determine all matters relative to the appraisal and allotment of lands."

It is not deemed necessary to consider in detail each allegation of error in said motion, it is sufficient to say that a careful examination of the whole record, including the briefs of counsel, shows no good reason for vacating or modifying said Departmental decision. The motion is accordingly denied, and the papers are returned.

Very respectfully,

JESSE E. WILSON,
Assistant Secretary.

(Enclosures.)

585 Department of the Interior.

Commissioner to the Five Civilized Tribes.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the foregoing,

"Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P" are true and correct copies of the records on file in this office in contest cases No. 830, entitled El-a E. Heady, by her husband Joshua B. Heady, Contestant, vs. Samuel Bob, a minor, Contestee, and No. 926, entitled Annie M. Martin, Contestant, vs. Wallace Thursday and Jesse L. Harnage, Contestees, Samuel Bob, by W. S. D. Moore, his next friend, Intervener, with the following exceptions, same not being of record in this office:

1. Certificate of Acting Commissioner of Indian Affairs, dated June 18, 1907, attached to Exhibit I, relative to service upon James K. Jones, Crosthwaite & Colladay and Henry W. Blair, of Departmental decision of June 12, 1907, in case No. 830.

2. Copies of letters of Acting Commissioner of Indian Affairs to the above parties, enclosing copies of said decision, attached to Exhibit I.

3. Copy of affidavit of Lucy M. Jennings, June 23, 1908, relative to service of motion for appeal from decision of Commissioner of Indian Affairs, in case No. 926, attached to Exhibit M.

THOS. RYAN,

Acting Commissioner to the Five Civilized Tribes.

July 5, 1911.

586 STATE OF OKLAHOMA,
Washington County, ss:

I, Ethel K. Childers, stenographer for the District Court of Washington County, Oklahoma, hereby certify that the above and foregoing pages from 1 to 586, inclusive, is a true and correct transcript of all the evidence introduced at the trial of the above entitled cause on the 27th day of October, 1911.

(Signed)

ETHEL K. CHILDERS.

587 That afterwards, to-wit, on the 5th day of May, 1911, the defendant Annie M. Martin, filed her separate demurrer herein to plaintiff's amended petition, which demurrer is in words and figures as follows, to-wit:

588 In the District Court for Washington County, State of Oklahoma.

No. 1251.

JESSE L. HARNAGE, Plaintiff,

v.

ANNIE M. MARTIN et al., Defendants.

Demurrer of Defendant Annie M. Martin.

Now comes the defendant, Annie M. Martin, by Butte, Boone & Lattimore, her attorneys, and demurs to so much and to such parts of the petition herein mentioned as follows, to-wit:

Paragraphs, Forty-one, Forty-two, Forty-three, Forty-four, Forty-five, Forty-six, Forty-seven, Forty-eight, Forty-nine, Fifty, Fifty-one, Fifty-two, Fifty-three, Fifty-four, Fifty-five, Fifty-six, Fifty-seven, Fifty-eight, Fifty-nine, Sixty, Sixty-one, Sixty-two, Sixty-three, Sixty-four, Sixty-five, Sixty-six, Sixty-seven, Sixty-eight, Sixty-nine, Seventy, Seventy-one, Seventy-two, Seventy-three, Seventy-four, Seventy-five, Seventy-six, Seventy-seven, and of Part Two of the petition commencing on page thirty-six thereof, sub-paragraphs numbered One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen, Eighteen, Nineteen, Twenty, and also paragraphs Seventy-nine, and eighty and for cause of demurrer says:

1. That the said paragraphs, separately or collectively, do not state facts sufficient to constitute a cause of action in this:

(a) That said paragraphs do not show that the Secretary of the Interior was induced to issue the certificate of allotment through fraud or gross mistake of the facts;

(b) That said paragraphs do not show that the Secretary of the Interior was induced to issue the allotment certificate on an erroneous view of the law as applied to the facts found, conceded or established without dispute before the said Secretary of the Interior.

(c) That said paragraphs do not show how the alleged error of the Secretary of the Interior arose in making his findings;

(d) That said paragraphs do not allege the facts found by the Secretary of the Interior upon which the said Secretary of the Interior misapplied the law;

(e) That said paragraphs raise collateral issues not proper to be determined in this cause;

(f) That said paragraphs or some of them allege conclusions of law;

(g) That said paragraphs or some of them raise immaterial issues of fact which are not a part of complainant's case.

This defendant further demurring to the petition in its entirety says that said petition does not state facts sufficient to constitute a cause of action.

BUTTE, BOONE & LATTIMORE,
Attorneys for Annie M. Martin.

Endorsements. No. 1251. Jesse L. Harnage, Plaintiff, v. Annie M. Martin et al., Defendants. Demurrer of Defendant, Annie M. Martin. District Court, Washington County, Oklahoma. Filed in open Court May 5, 1911 L. C. Pollock, Clerk. Butte, Boone & Lattimore, Att'ys for Annie M. Martin.

590 That on the same day, to-wit, May 5th, 1911, the defendant The Roth-Argue-Maire Brothers Oil Company filed its separate demurrer to plaintiff's amended petition, which demurrer is in words and figures as follows, to-wit:

591 In the District Court for Washington County, State of Oklahoma.

No. 1251.

JESSE L. HARNAGE, Plaintiff,

vs.

ANNIE M. MARTIN et al., Defendants.

Demurrer of Defendant, Roth-Argue-Maire Bros. Oil Company, a Corporation.

Now comes the Roth-Argue-Maire Bros. Oil Company, a corporation, by W. L. MacKenzie and Butte, Boone & Lattimore, its attorneys, and demurs to the petition filed herein and for ground of demurrer says that the petition does not state facts sufficient to constitute a cause of action against it.

BUTTE, BOONE & LATTIMORE,

Attorneys for Roth-Argue-Maire Bros. Oil Company.

Endorsements. No. 1251. Jesse L. Harnage, Plaintiff, vs. Annie M. Martin et al., Defendants. Demurrer of Defendant, Roth-Argue-Maire Bros. Oil Company. District Court, Washington County, Oklahoma. Filed in open court May 5th, 1911. L. C. Pollock, Clerk. Butte, Boone & Lattimore, Att'ys for Roth-Argue-Maire Bros. Oil Co.

592 That afterwards, and on the same date, to-wit, May 5th, 1911, the following further proceedings were had and done herein:

Demurrers of the defendants Annie M. Martin and The Roth-Argue-Maire Brothers Oil Company overruled, to which action of the court such defendants then and there duly excepted and now except.

593 That afterwards and on the 15th day of May, 1911, the following further proceedings were had and done herein, to-wit: The joint answer of the defendants, Annie M. Martin and the Roth, Argue-Maire Bros. Oil Company, a corporation, was duly filed in the office of the Clerk of said Court, in the words and figures following, to-wit:

594 In the District Court for Washington County, Oklahoma.

No. 1251.

JESSE L. HARNAGE, Plaintiff,

v.

ANNIE MARTIN and THE ROTH-ARGUE-MAIRE BROS. OIL COMPANY,
a Corporation, Defendants.

Answer of the Defendants.

Now comes the defendants, Annie M. Martin and the Roth-Argue, Maire Bros. Oil Company, a corporation, by Butte, Boone & Lattimore, their attorneys, and for answer to the petition or to so much and to such parts thereof as they are advised is material to make answer unto, and say:

1. That they deny each and every of the material allegations in said petition contained;

2. These defendants deny that the decision of the Honorable Secretary of the Interior on questions of fact, awarding the lands in controversy to the defendant, Annie Martin, were induced by fraud or gross mistake;

3. These defendants further deny that upon the facts found, conceded or established without dispute, at the final hearing before the Honorable Secretary of the Interior, that the said Secretary fell into a clear error in the construction of the law applicable to the case, which caused him to issue a patent to the wrong party.

BUTTE, BOONE & LATTIMORE,

Attorneys for Defendants.

595 That afterwards, to-wit, and on the 16th day of October, 1911, the following further proceedings were had herein:

596 In the District Court of Washington County, Oklahoma.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS & OIL Co., a Corporation,
Plaintiffs,

vs.

ANNIE MARTIN and ROTH ARGUE, MAYER BROTHERS OIL COMPANY,
a Corporation, Defendants.

Order.

Now on this 16th day of October, 1911, comes on to be heard in open court the application of defendant Annie Martin for leave to file an amended answer herein and the court being fully advised in the premises,

It is hereby ordered, adjudged and decreed that the said defendant Annie Martin be and is hereby granted five days from and after this date to file her separate amended answer herein without prejudice to trial at this term, to all of which plaintiff Harnage excepts.

Upon application of plaintiff and by consent of parties, Delokee Gas & Oil Company is made a party plaintiff and Delokee Gas & Oil Company enters its appearance by its attorneys Veasey and Rowland.

R. H. HUDSON, *Judge.*

Endorsements: No. 1251. In the District Court of Washington County, Oklahoma, Jesse L. Harnage, Plaintiff, vs. Annie M. Martin and Roth Argue, Mayer Brothers Oil Company, a corporation, defendants. Order Granting Leave. District Court Washington County, Oklahoma. Filed October 17, 1911, L. C. Pollock. Entered: J. C. Denton, Assistant U. S. Attorney, Of counsel for defendant Annie Martin.

597 That afterwards, to-wit, and on the 19th day of October, 1911, the defendant Annie M. Martin filed her separate amended answer to the amended petition of the plaintiff herein, which amended answer is in words and figures as follows, to-wit:

598 In the District Court of Washington County, Oklahoma.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS & OIL Co., a Corporation,
Plaintiffs,

VS.

ANNIE MARTIN and ROTH ARGUE, MAIRE BROTHERS OIL COMPANY,
a Corporation, Defendants.

Separate Amended Answer of Defendant Annie Martin.

I.

Comes now Annie Martin, one of the defendants in the above entitled action, by J. C. Denton, Assistant United States Attorney and for her amended answer to the petition of the plaintiff filed herein, denies each, every, all and singular the allegations contained therein except those which are hereinafter specifically admitted.

II.

Said defendant admits that the above named plaintiff, Jesse L. Harnage, is a resident of the city of Tulsa, Oklahoma, and that said plaintiff is now or was duly enrolled upon the records of the Commission to the Five Civilized Tribes or upon the records of its successor the Commissioner to the Five Civilized Tribes, as a citizen by blood of the Cherokee Nation of Indians.

III.

Said defendant admits that at all times mentioned in the petition of plaintiff, she was duly enrolled upon the records of the Commission to the Five Civilized Tribes as a citizen by blood of the Cherokee Nation of Indians.

599

IV.

Said defendant states that she is uninformed and therefore denies that the defendant Roth Argue, Maire Brothers Oil Company is and was at the time referred to in said petition of plaintiff, a corporation duly organized and existing under the laws of the State of Idaho and domiciled in said State and that said corporation is duly authorized to carry on business in the State of Oklahoma as a foreign corporation and has designated an agent in the City of Guthrie, Oklahoma, upon whom service may be had with respect to suits filed against said corporation in said State of Oklahoma.

V.

Said defendant admits that the lands involved in this controversy, to-wit, the northeast quarter of the southwest quarter less 3.08 acres right of way of K. O. C. & S. R. R. and the northwest quarter of the southeast quarter of section 13, township 26 north, range 12 east containing 76.92 acres, is a portion of the land ceded to the Cherokee Nation of Indians by the treaty of New Echota concluded between the United States and the said Cherokee Nation in 1835, which said land was confirmed unto said Cherokee Nation by treaties between the United States and said Cherokee Nation in the City of Washington, D. C. in 1846 and in 1866.

VI.

Said defendant admits that the above described lands are a portion of the lands of the Cherokee Nation intended to be allotted to the citizens of said nation under the terms of the Act of Congress approved July 1, 1902, which said Act is commonly called the Cherokee Treaty.

VII.

Said defendant admits the allegations contained in the sixth paragraph of plaintiff's petition.

600

VIII.

Said defendant admits the allegations contained in the seventh paragraph of plaintiff's petition.

IX.

Said defendant admits that the enrollment of the said plaintiff Jesse L. Harnage as a citizen by blood of the Cherokee Nation of

Indians has been duly approved by the Secretary of the Interior and was provided by the Act of Congress above referred to.

X.

Said defendant admits the allegations contained in the ninth paragraph of plaintiff's petition.

XI.

Said defendant admits that on or about the 1st day of July, 1893 all of the lands above described together with about two hundred and twenty acres of land lying to the north thereof, was contained in an enclosure belonging to Johnstone and Keeler who at said time were claimants to citizenship in said Cherokee Nation by intermarriage and were generally recognized and dealt with and exercised the rights of Cherokee citizens by blood and said defendant further admits that at said time the lands above described together with said one hundred and twenty acres lying to the north hereof comprised a single farm or improvement partly in cultivation and with certain buildings thereon and was known as the "Jacob Wheeler Farm."

XII.

Said defendant denies that on July 1st, 1893 one Wallace Thursday, a claimant to citizenship in said Cherokee Nation by intermarriage, and a person claiming all the rights of Cherokee citizenship and a person at said time recognized as a citizen of said Cherokee Nation, purchased said so-called "Jacob Wheeler Farm" including all of the land described in this petition for Mary Thursday, 601 day, then the insane wife of said Wallace Thursday, and for one Samuel Bob then the minor step-grand-child of said Wallace Thursday, both of which said parties last mentioned were duly enrolled citizens by blood of said Cherokee Nation, and said defendant denies that in payment therefor said Wallace Thursday gave the said Johnstone and Keeler the sum of \$800.00 which said payment was made out of the Delaware Indian payment money of the said Mary Thursday and Samuel Bob then in the possession of the said Wallace Thursday, the greater portion of which \$800.00 being the moneys of the said Samuel Bob, and said defendant denies that said purchase of said improvement or farm was evidenced by the execution and delivery by said Johnstone and Keeler of a certain bill of sale, a copy of which is attached to, marked plaintiff's Exhibit "A" and made a part of plaintiff's petition herein.

XIII.

Said defendant denies that on the 1st day of July, 1893, said Wallace Thursday took possession of said so-called "Jacob Wheeler Farm" including all of the land described herein as and for the agent and representative of the said Mary Thursday and of the

said Samuel Bob and said defendant denies that said Wallace Thursday continued in the sole and exclusive possession of said lands as such agent and representative up to and including the 13th day of May, 1904.

XIV.

Said defendant denies that during all of said period of time from and including said first day of July, 1893, up to and including said 13th day of May, 1904, said Mary Thursday was a person of unsound mind and of insufficient mental capacity to make a contract, and denies that the said Samuel Bob was a minor and a person under full age.

XV.

Said defendant denies that at no time since said 1st day 602 of July, 1893 up to and including said 13th day of May, 1904; was she the owner of any of the improvements upon said so-called "Jacob Wheeler Farm" including as it did the lands specifically described in plaintiff's bill of complaint, and said defendant denies that at no time during said period was she in possession of any part of said so-called "Jacob Wheeler Farm" including the land described in plaintiff's petition herein, and said defendant denies that she has not been in the lawful possession of any portion of the land described in plaintiff's petition at any time since said 13th day of May, 1904, up to and including the time of the filing of this action.

XVI.

Said defendant denies that on or about the 5th day of May, 1904, said Wallace Thursday, then a claimant to citizenship in the Cherokee Nation by intermarriage, had selected as a portion of his allotment in said Nation, the lands specifically described in plaintiff's petition, but admits that said person filed an application on said date to select said land, which was subsequently denied, but said defendant admits that said Wallace Thursday as the legal guardian of Samuel Bob, had selected as the allotment of the said Samuel Bob in said notion the eighty acre tract of land immediately north of the lands described in plaintiff's petition, which said last mentioned eighty acre tract was also a part of the said so-called "Jacob Wheeler Farm"; and said defendant admits that on said 5th day of May, 1904, the claim to citizenship in said Cherokee Nation of the said Wallace Thursday was a subject of doubt, but denies that at the same time said Wallace Thursday as the legal guardian of said Samuel Bob and the said Samuel Bob himself then a minor, anticipated the institution of a contest proceeding against said Samuel Bob with respect to the land selected in allotment for said Samuel Bob as already described herein.

603

XVII.

Said defendant denies that plaintiff entered into a certain agreement with said Wallace Thursday on his own behalf and as a legal

guardian of Samuel Bob under the terms of which said party last mentioned agreed to permit plaintiff to select the lands particularly described in his petition as a portion of his allotment in said Cherokee Nation upon the condition that the said selection would be subject to the prior claims of said Wallace Thursday and said Samuel Bob to select said land as their respective allotments in said Cherokee Nation, and said defendant denies that said agreement contemplated that plaintiff should receive as his allotment in said Cherokee Nation the lands particularly described in the petition herein in the event that said Wallace Thursday should fail to establish his citizenship in said Cherokee Nation, and in the further event that said Samuel Bob should not be deprived of the allotment selected for him north of the lands described herein by said anticipated contest proceedings. However, defendant admits that plaintiff made a purported or colorable contract with said Wallace Thursday dated June 21, 1905, with respect to lands in controversy; but avers that said contract is of no force and effect for the reason that said Wallace Thursday had no right, title or interest in and to said lands or the improvements thereon on said date or at any other time.

XVIII.

Said defendant admits that said Wallace Thursday failed to establish his citizenship in said Cherokee Nation and that said Samuel Bob succeeded in said contest proceeding with respect to the eighty acre tract of land lying to the north of the land particularly described in plaintiff's petition, but denies that said plaintiff thereupon was vested with the sole, absolute and indefeasible right to select as
604 his allotment in the Cherokee Nation the lands specifically described in the petition of plaintiff for the reasons specifically mentioned in paragraph eighteen (18) supra.

XIX.

Said defendant denies that in conformity with said purported agreement of June 21, 1905, said Wallace Thursday on or about the said 5th day of May, 1904, transferred and set over the possession and all right, title and interest in and to the improvements upon said above described land, to plaintiff, and said defendant denies that the plaintiff immediately entered upon said land or into the possession of the same, which said lands are specifically described in plaintiff's petition and are a part of the so-called "Jacob Wheeler Farm," and defendant denies that plaintiff completely enclosed said lands with a row of fence posts.

XX.

Said defendant admits the allegations contained in the nineteenth paragraph of plaintiff's petition, except that she denies that at said time, May 13, 1904, said lands were set apart and designated as a portion of the allotment of plaintiff.

XXI.

Said defendant denies that on May 13, 1904, when plaintiff applied to the Commission to the Five Civilized Tribes to select said land as his allotment, this defendant was not in the possession of any portion of the lands in controversy, and denies that she was not the owner of any of the improvements on said lands, and denies that said plaintiff at said time had no notice either actual or constructive of any alleged claim, kind or character either in law or equity of this defendant to said land.

XXII.

Said defendant admits that on the 26th day of May, 1904, she appeared before said Commission to the Five Civilized Tribes and applied to have the lands described herein set apart to her as a portion of her allotment in the Cherokee Nation and that her application was at the time denied by said Commission and that immediately thereupon on May 26, 1904, this defendant instituted contest proceedings before said Commission to the Five Civilized Tribes against the above named plaintiff, and this defendant admits that in said contest proceedings she asserted her right to select said lands as her allotment and that a copy of her complaint filed in said contest proceeding and containing the basis of her claim to the lands in controversy, is attached to plaintiff's petition, made a part thereof and marked "Complainant's Exhibit B."

XXIII.

Said defendant admits the allegations contained in the twenty-second and twenty-third paragraphs of plaintiff's petition.

XXIV.

Said defendant admits that Mary Thursday and Samuel Bob were Delaware Cherokee Citizens and that on or about the 5th day of May, 1904, said Mary Thursday and Samuel Bob selected their respective allotments in said Cherokee Nation, but denies that the improvements upon the lands described in plaintiff's petition were owned by said persons or that the improvements on said lands were the excess or surplus improvements of the said Mary Thursday and Samuel Bob, and denies that there was no valid adverse claim against said Mary Thursday and said Samuel Bob with respect to the improvements on said lands.

XXV.

Said defendant admits the allegations contained in the twenty-fifth paragraph of plaintiff's petition.

XXVI.

Said defendant denies that the Commission to the Five Civilized Tribes unlawfully, arbitrarily and in a manner constituting fraud with respect to the rights of the said Mary Thursday and of Samuel Bob and with respect to the rights of said plaintiff, wholly refused and failed to permit the hearing on the alleged petition filed on the 30th day of June, 1905 with the Commission to the Five Civilized Tribes by Wallace Thursday as the legal guardian of Mary Thursday, a person of unsound mind and Samuel Bob, a minor, and said defendant denies that the said Commission to the Five Civilized Tribes wholly failed and refused to certify the lands in controversy as the surplus or excess improvements of the said Mary Thursday and of the said Samuel Bob to the proper official of the Interior Department, but said defendant alleges that Wallace Thursday, guardian of Mary Thursday on December 5, 1907 and Sam Bob on December 10, 1907 filed with said Commission their respective applications to withdraw said petition filed on June 30th, 1905 and said defendant denies that the said Samuel Bob and Mary Thursday were unlawfully deprived of rights conferred on them as Delaware Cherokee citizens to sell their excess or surplus improvements in accordance with the Act of Congress of March 3, 1905 on the lands in controversy.

XXVII.

Said defendant admits that on June 21, 1905, the United States Court for the Northern District of the Indian Territory sitting at Nowata in probate, made a certain order upon the verified petition of the said Wallace Thursday as legal guardian of Mary Thursday and that a copy of said order is attached to plaintiff's petition and marked "Complainant's Exhibit D" but said defendant denies that at said time said Mary Thursday had any right, title or interest in and to the improvements on the land in controversy.

XXVIII.

Said defendant further admits that on June 21, 1905 said United States Court for the Indian Territory appointed Wallace Thursday as guardian of the estate of Samuel Bob, a minor, for the purpose of selling said minor's alleged undivided one-half interest in and to the improvements upon the lands in controversy herein, and that a copy of said order is attached to plaintiff's petition and marked "Complainant's Exhibit E" but said defendant denies that at said time the said Samuel Bob, a minor, had any right, title or interest in and to the improvements on said land.

XXIX.

Said defendant denies that the failure of the Commission to the Five Civilized Tribes to hear the petition to determine whether or

not the improvements on said land were the surplus or excess improvements of the said Mary Thursday and Samuel Bob and the failure of said Commission to certify that said lands were the excess or surplus improvements of the said Mary Thursday and Samuel Bob deprived plaintiff and said Mary Thursday and Samuel Bob of their right in and to said lands under the terms of said order of court above referred to.

XXX.

Said defendant denies that at the time of plaintiff's selection of the lands in controversy on May 13, 1904, he agreed with said Wallace Thursday for a good and valuable consideration that he the said Wallace Thursday should remain in possession of said land as his tenant but said defendant admits that on the 10th day of June, 1905, plaintiff and said Wallace Thursday entered into an alleged lease with respect to said lands, which said lease purports to rent said lands to the said Wallace Thursday for the term of five years from June 10, 1905, and that a copy of said purported lease is attached to plaintiff's petition and marked "Complainant's Exhibit

608 F" but this defendant denies that plaintiff had any right, title or interest in and to said lands at the time of the execution of the above mentioned lease and alleges the fact to be that said purported lease was executed for the purpose of bolstering up the alleged claim of said plaintiff to the improvements on said land.

XXXI.

Said defendant admits the allegations contained in the thirty-first paragraph of plaintiff's petition.

XXXII.

Said defendant admits the allegations contained in the thirty-second paragraph of plaintiff's petition though plaintiff does not admit the correctness of complainant's Exhibit G to the petition herein.

XXXIII.

Said defendant admits the allegations contained in the thirty-third paragraph of plaintiff's petition though said defendant does not admit the correctness of complainant's Exhibits "H," "T" and "J" respectively attached to the petition herein.

XXXIV.

Said defendant admits that on the 2nd day of January, 1908, the Commission to the Five Civilized Tribes rendered its decision in said Cherokee allotment contest case wherein plaintiff was contestee and this defendant was contestant under which decision the lands in controversy were awarded to this defendant and that plaintiff appealed from said decision to the Commissioner of Indian Affairs, who

on May 25, 1908 rendered his decision affirming the decision of said Commissioner to the Five Civilized Tribes but defendant does not admit that Complainant's Exhibits "K" and "L" attached to the petition herein are correct copies of the decision above mentioned.

XXV.

609 Said defendant admits the allegations contained in the thirty-fifth paragraph of plaintiff's petition.

XXXVI.

Said defendant admits that on the 10th day of October, 1908 the Honorable Secretary of the Interior rendered his decision in said Cherokee allotment contest wherein defendant was contestant and plaintiff was contestee, under which decision the lands in controversy herein were finally awarded to this defendant as her allotment of the Cherokee Nation and under which decision the right and claim of plaintiff herein to select said lands as his allotment in said Cherokee Nation was finally denied, but said defendant does not admit that "complainant's Exhibit N" attached to the petition herein is a true copy of the decision in question.

XXXVII.

Said defendant admits the allegations contained in the thirty-seventh paragraph of plaintiff's petition.

XXXVIII.

Said defendant denies that in the consideration of the appeal in the above mentioned contest case and in the consideration of the motion for review of the same and in the rendering of a decision in said allotment contest case, the Secretary of the Interior wholly ignored the prayer of the plaintiff for special findings of fact and conclusions of law on questions of fact material to the issue in said contest case, and said defendant alleges that plaintiff in said contest proceeding had no right to have the Honorable Secretary of the Interior make a special finding of facts and conclusion of law in said case, and alleges that the said plaintiff was in no way unduly prejudiced thereby.

XXXIX.

The said defendant admits that immediately subsequent to the decision of the Honorable Secretary of the Interior awarding the land in controversy herein to this defendant, certificates of
610 allotment and also homestead and allotment deeds covering said lands were issued to this defendant by the Commission to the Five Civilized Tribes acting under the direction of the Honorable Secretary of the Interior.

XL.

Said defendant admits the allegations contained in the fortieth paragraph of plaintiff's petition; and avers that plaintiff was not

then and is not now entitled to any remedy either at law or in equity as against this defendant.

XLI.

Said defendant denies that said decision of the Honorable Secretary of the Interior awarding said lands to this defendant, was erroneous, and denies that in said decision, said Secretary of the Interior fell into a gross misapprehension as to what were material facts in said cause as shown by the record before him and denies that said Secretary in said decision applied principles of law which had no bearing upon the facts conceded or established by the record, and denies that said Secretary in said decision failed to apply principles of law which were applicable to and controlling with respect to the material facts found, conceded or established by the record in said case.

XLII.

Said defendant denies that one of the material issues of fact in said Cherokee allotment case above mentioned as shown by the record thereof before the Secretary of the Interior, was whether or not in April, 1893, the lands specifically described therein, together with about one hundred and twenty acres of land contiguous thereto, was purchased for Mary Thursday, then a person of unsound mind, and Samuel Bon, then a minor, by Wallace Thursday, the husband of Mary Thursday and the stepgrand-father of Samuel Bob, with \$800.00 of Delaware payment moneys of the said Mary Thursday and Samuel Bob, the greater part of which purchase money was paid out of the estate of Samuel Bob and said defendant denies that said Secretary of the Interior made no finding upon said issue of fact and denies that in failing so to do said Secretary of the Interior committed a grave and controlling mistake in the determination of said contest case which mistake was due either to a careless or insufficient examination of said cause or to an unwarranted bias or prejudice against the plaintiff, or to a gross misapprehension of the facts before him which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

XLIII.

Said defendant denies that another of the material issues of fact in said Cherokee allotment contest case was whether or not from the date of said purchase until at least the selection of a portion of the so-called "Jacob Wheeler Farm" in allotment by Samuel Bob, said entire "Jacob Wheeler Farm" embracing the lands in controversy herein remained the joint property of the said Mary Thursday and Samuel Bob and said defendant denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said cause, which mistake was due either to a careless or insufficient examination of said cause or to an unwar-

ranted bias or prejudice against plaintiff or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

XLIV.

Said defendant denies that another material issue of fact in said contest case as shown by the record therein, was whether or
 612 not plaintiff made the first formal selection of said land as a portion of his allotment in said Cherokee Nation and that the selection of the defendant was subsequent to the selection of the plaintiff, and further denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless and insufficient examination of said cause, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

XLV.

Said defendant denies that another material issue of fact in said contest case was whether or not in 1899 at the time of the alleged gift of the improvements upon the lands in controversy by Mary Thursday to this defendant, said Mary Thursday was mentally incompetent to make a contract regarding said property and denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless and insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

XLVI.

Said defendant denies that another of the material issues of fact in said contest case, was whether or not in 1899 Samuel Bob the
 613 alleged joint owner with Mary Thursday of the improvements upon the lands in controversy, was at said time a person under full age and incompetent under the law to make a contract respecting his property, and denies that the Secretary of the Interior made no finding upon said issue of fact and that failing so to do he committed a grave and controlling mistake in his determination of said case which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

XLVII.

Said defendant denies that another of the material issues of fact in said contest case, was whether or not the said alleged gift in 1899 of the improvements on the land in controversy upon which the defendant relies was at the time approved by the proper court having jurisdiction of the estate of the said Mary Thursday, a person of unsound mind and said Samuel Bob, a minor, and denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or a gross misapprehension of the facts which had a like effect as a mistake of law, and by reason of which the allotment certificate was issued to this defendant.

XLVIII.

Said defendant denies that another material issue of fact in said contest cases was whether or not this defendant had ever been in the lawful possession of said lands either in her own person
614 or through Mary Thursday or whether any other acts occurred with respect to said lands evidencing a delivery of the possession of the same from the said Mary Thursday to this defendant, and denies that the Secretary of the Interior made no finding upon said issue of fact, and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

XLIX.

Said defendant denies that another of the material issues of fact in said contest case was whether or not said Samuel Bob had transferred his alleged interest in said lands to this defendant, and denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of the records therein or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

L.

Said defendant denies that another of the material issues of fact in said contest case, was whether or not Mary Thursday and Samuel

Bob were Delaware Cherokee citizens and were duly enrolled as such during the time said persons had the right under the regulations of the Secretary of the Interior to dispose of their excess improvements upon lands of the Cherokee Nation, and denies that the Secretary of the Interior made no finding upon said issue of fact
615 and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LI.

Said defendant denies that another of the material issues of fact in said contest case, was whether or not said Mary Thursday and said Samuel Bob made an attempt to comply with the regulations of the Department of the Interior with respect to the sale of their alleged surplus improvements as Delaware-Cherokee citizens, and whether or not they were deprived of the rights in regard thereto as such Delaware Cherokee citizens by the arbitrary and unwarranted action of the Commissioner to the Five Civilized Tribes, and denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LII.

Said defendant denies that another of the material issues of fact in said contest case was whether or not at the time of the selection of said land by plaintiff on May 13, 1904, he was in possession of and the owner of valuable improvements upon said lands, and denies that the Secretary of the Interior made no finding upon said
616 issue of fact, and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law, and by reason of which the allotment certificate was issued to this defendant.

LIII.

Said defendant admits that the Secretary of the Interior in said contest case found from the record therein that in 1899 said Mary Thursday gave the improvements upon said lands to this defendant,

but said defendant denies that there is no evidence in said record in said contest case which supports or tends to support said finding of fact, and denies that the Secretary of the Interior in making said finding of fact committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LIV.

Said defendant admits that the Secretary of the Interior in said contest case found from the record therein that plaintiff had knowledge of the claim of this defendant to the improvements upon the lands in controversy herein, but this defendant denies that there is no evidence in said record proving or tending to prove said finding of fact by the Secretary of the Interior and denies that the Secretary of the Interior in making such finding of fact committed a grave and controlling mistake in the determination of said cause, which mistake was due either to a careless or insufficient examination of said case, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LV.

Said defendant admits that the Secretary of the Interior in said contest case, found from the record therein that subsequent to the year 1899 and prior to the selection of said lands by plaintiff, to-wit, May 13, 1904, Annie M. Martin either in her own person or through Mary Thursday, was in the possession of the lands in controversy herein, but this defendant denies that there is no evidence in said record proving or tending to prove said fact as found by the Secretary of the Interior in said case, and denies that the Secretary of the Interior in making said finding of fact committed a grave and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LVI.

Said defendant admits that the Secretary of the Interior in said contest case found from the record therein that Bill Bob the father of this defendant, acquired some interest in the possessory right to the improvements on the lands in controversy, which right descended to this defendant on the death of said Bill Bob, but this

defendant denies that there is no evidence in the record in said case proving or tending to prove the fact thus found by the Secretary of the Interior, and denies that the Secretary of the Interior in making said finding of fact committed a grave and controlling mistake in taking in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the fact, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LVII.

Said defendant admits that the Secretary of the Interior in said contest case found from the record therein that this defendant had such possession of or control over the improvements upon the lands in controversy prior to the selection thereof by plaintiff, as would give notice to the world of this defendant's right or claim to said improvements, but this defendant denies that there was no evidence in said record proving or tending to prove said fact as found by the Secretary of the Interior, and denies that said Secretary in making said finding of fact committed a grave and controlling mistake in the determination of said case, which mistake is due either to a careless or insufficient examination of said case, or to an unwarranted bias or prejudice against plaintiff which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LVIII.

Said defendant denies that another material issue of fact in said contest case was whether or not Mary Thursday and Samuel Bobbitt as Delaware Cherokee citizens had the right under the regulations of the Secretary of the Interior to dispose of their excess improvements upon the lands in controversy, and denies that the Secretary of the Interior made no finding upon said issue of fact and that in failing so to do he committed a gross and controlling mistake in the determination of said case, which mistake was due either to a careless or insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had the like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LIX.

Said defendant denies that another material issue in said contest case was whether or not said Mary Thursday and said Samuel Bobbitt made any attempt to comply with the regulations of the Department of the Interior with respect to a sale as Delaware Cherokee citizens of their alleged surplus improvements on the lands in controversy, and whether or not they were deprived of their right in regard thereto as such citizens by the alleged arbitrary and unwarranted action

the Commissioner to the Five Civilized Tribes, and denies that the Secretary of the Interior made no findings upon said issue of fact and that in failing so to do he committed a grave and controlling mistake in the determination of said case, which was due either to a careless and insufficient examination of said case or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LX.

This defendant denies that the Secretary of the Interior made a gross and controlling mistake when he failed, neglected and refused in said contest case to find from the testimony therein that said plaintiff was the owner of and in the lawful and peaceable possession of the improvements on the lands in controversy at the time said plaintiff applied to select the same as part of his allotment in said Cherokee Nation and denies that the Secretary of the Interior in failing, neglecting and refusing so to do committed a gross
620 and controlling mistake in the determination of said case which was due either to a careless and insufficient examination of the record therein or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LXI.

Said defendant denies that the Honorable Secretary of the Interior made a gross and controlling mistake when he failed, neglected and refused in said contest case to find that as between plaintiff and this defendant the land in controversy therein was public domain and that plaintiff was the first to apply for the same, which mistake was due either to a careless and insufficient examination of the record therein or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the certificate of allotment was issued to this defendant, and said defendant further denies that the Secretary of the Interior in said contest case made a gross and controlling mistake of fact when he found from the record therein that this defendant became a member of the Thursday household in early childhood and that said Mary Thursday stood in loco parentis as to this defendant, which mistake was due either to a careless or insufficient examination of the record therein, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts or for the reason that misrepresentation and fraud had been practiced necessarily affecting the judgment of the Secretary of the Interior, which had a like effect as a mistake of law and by reason of which the certificate of allotment was issued to this defendant.

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LXII.

Said defendant denies that the Secretary of the Interior made a

a grave and controlling mistake of fact in said contest case when found from the record therein that this defendant made her home upon the original Thursday place and that this was a material fact which said mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case, which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record in said case, or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which mistake had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LXIII.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when found from the record therein that Annie M. Martin was after April 1901, by force removed from the home of the Thursday family and brought to the home of one Frank Frenchman, which said mistake was due either to the arbitrary action of the Secretary of the Interior in going outside of the record in said case which was a fraud upon the rights of plaintiff, or to a careless and insufficient examination of the record or to an unwarranted bias and prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to defendant.

LXIV.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when found from the record therein that Mary Thursday used various sums of money belonging to this defendant in the establishment of the Thursday home and that this was a material fact in said contest case, which said mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case which was a fraud upon the rights of this plaintiff or to a careless and insufficient examination of the record, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts which had a like effect as a mistake of law, and by reason of which the allotment certificate was issued to this defendant.

LXV.

Said defendant denies that said Secretary of the Interior made a gross and controlling mistake of fact in said contest case when found from the record therein that Mary Thursday and Walla Thursday ever at any time informed this defendant that she had an interest in the Thursday holdings and was entitled to a share therein and that this was a material fact in said contest case, which said mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case, which was a fraud upon the rights of the plaintiff, or to the careless and insufficient examination of the record, or to an unwarranted bias

and prejudice against the plaintiff or to a gross misapprehension of the fact which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LXVI.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that plaintiff had any knowledge whatever of this defendant's claim to the improvements on the land in controversy, which mistake was due either to the arbitrary action of the Secretary of the Interior in going outside of the record in said case, which was a fraud on the rights of plaintiff, or to a careless and insufficient examination of the record, or to an unwarranted bias and prejudice against plaintiff, or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LXVII.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that this defendant acquired any interest in the Thursday place including the land in controversy herein either by money loaned or by labor or otherwise, 623 which said mistake was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case, which was a fraud upon the rights of the plaintiff or to a careless and insufficient examination of the record, or an unwarranted bias and prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LXVIII.

This defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that Mary Thursday or Wallace Thursday ever used any of the money of this defendant in improving the original Thursday place or in placing improvements on the lands in controversy, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside of the record in said case which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record or to an unwarranted bias or prejudice against the plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

LXIX.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he

found from the record therein that this defendant was ever at any time in the lawful possession of the improvements on the original Thursday place or on the land in controversy either in person or through another which said mistake of fact was due either to
624 the arbitrary action of the Secretary of the Interior in going outside the record in said case, which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record, or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

70.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that this defendant ever acquired any interest in the improvements on the original Thursday place or on the land in controversy, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case which was a fraud upon the rights of plaintiff, or to a careless and insufficient examination of the record, or to an unwarranted bias or prejudice against plaintiff or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

71.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said case when he found from the record therein that Wild Bill or Bill Bob, the father of this defendant, ever acquired any possessory right or interest in any of the improvements on any of the Thursday holdings, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case, which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record in said case or to an unwarranted bias or prejudice against plaintiff or to a gross mis-
625 apprehension of the facts, which had a like effect as a mistake of law, and by reason of which the allotment certificate was issued to this defendant.

73.

Said defendant denies *the* the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that Mary Thursday ever received payments of money belonging to this defendant for any purpose whatever, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case which was a fraud upon the rights of the plaintiff, or

to a careless and insufficient examination of the record in said case, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

74.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that Wallace Thursday was not in the lawful possession of the improvements on the lands in controversy and that he did not have the right to transfer the same to plaintiff, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record in said case, or to an unwarranted bias and prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

626

75.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that plaintiff did not enter into the lawful and peaceable possession of the improvements on said land and did not acquire any interest in the same by lawful contract based upon a good and adequate consideration, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record in said case, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

76.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that this defendant ever at any time had control or authority directly or indirectly over the improvements on the lands in controversy prior to the time of her application for the same which would be notice to the world of her rights in or claim to said improvements, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case which was a fraud upon the rights of the plaintiff, or to a careless and insufficient examination of the record in said case, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the

facts, which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant.

627

77.

Said defendant denies that the Secretary of the Interior made a gross and controlling mistake of fact in said contest case when he found from the record therein that plaintiff at the time he purchased the claim of Wallace Thursday to the improvements on the lands in controversy was not a bona fide purchaser without notice for good and valuable consideration and that when he was put in possession of the said improvements by Wallace Thursday he did not acquire a good title to said improvements against all the world, which mistake of fact was due either to the arbitrary action of the Secretary of the Interior in going outside the record in said case, or to a careless and insufficient examination of the record in said case, or to an unwarranted bias or prejudice against plaintiff, or to a gross misapprehension of the facts which had a like effect as a mistake of law and by reason of which the allotment certificate was issued to this defendant. The said defendant further denies that the Secretary of the Interior in said contest case fell into numerous gross errors of law and failed and neglected and refused to apply principles of law which were operative and controlling in said case, and denies that said Secretary committed many grave errors in the principles of law which were applicable and denies that said Secretary applied those principles which had no bearing whatever on the issues of fact in said case, thereby unlawfully, arbitrarily and without any reason in fact deprived plaintiff of his right and title in and to said lands and denies that the Secretary of the Interior unlawfully awarded said lands to this defendant, and denies that the said Secretary committed the gross errors of law specifically set out in Subdivision- One to Twenty inclusive or Paragraph 77 of plaintiff's petition.

628

78.

Said defendant admits that by reason of the decision of the Secretary of the Interior in said contest case, certificates of allotment covering the lands in controversy were issued to this defendant, but this defendant denies that a certificate to said land should either in fact or in law have been issued to plaintiff.

79.

Said defendant denies that plaintiff had a vested right in and to the lands in controversy and was entitled to have the same allotted to him as a portion of his allotment in said Cherokee Nation by reason of his being the alleged owner of the improvements thereon and in the possession thereof at the time of his selection of said lands on May 13, 1904 and denies that the Secretary of the Interior unlawfully and erroneously awarded said lands to this defendant in said contest case, thereby depriving plaintiff of any relief in the premises and compelling plaintiff to resort to this court for relief.

80.

Said defendant admits the allegations contained in the Eighty-first paragraph of plaintiff's petition.

81.

Said defendant denies that plaintiff is entitled to the allotment value of the lands in controversy herein out of other lands of the Cherokee Nation of Indians but admits that said plaintiff was entitled to an allotment out of the tribal lands of the Cherokee Nation or to take in lieu thereof the value of an allotment in money.

82.

Said defendant denies that she is wholly insolvent but alleges the fact to be that she is solvent and fully able to respond to plaintiff in such damages as may be awarded to him in this action.

629

83.

Said defendant denies that the Honorable Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded, or established in said Cherokee Allotment Contest case that the hold of the improvements and the possessory right thereof and the lands held in controversy were communal and by reason of which mistake the allotment certificate was issued to this defendant.

84.

Said defendant denies that the Honorable Secretary of the Interior made a gross and controlling mistake of law when he concluded from the facts found, conceded or established in said Cherokee Allotment Contest case that this defendant was never a member of the Thursday family under the Act of Congress of June 28, 1898, and the Act of Congress of July 2, 1902, known as the Cherokee Agreement, governing the allotment of lands in the said Cherokee Nation, by reason of which mistake the allotment certificate was issued to this defendant.

85.

Said defendant denies that the Honorable Secretary of the Interior made a gross and controlling mistake of law in said Cherokee Allotment Contest case when he concluded from the facts found, conceded or established, that by reason of plaintiff's attempt to purchase the improvements as the Delaware surplus of Sam Bob and Mary Thursday and by reason of the effort of Wallace Thursday to make a sale of said improvements and by reason of the acts of the officials of the Interior Department in preventing said sale that

plaintiff Harnage was not entitled to select said land as his allotment, by reason of which mistake the allotment certificate was issued to this defendant.

630

86.

Further answering the petition herein, said defendant alleges and avers that the improvements on the lands in controversy, together with adjoining lands were purchased by Mary Thursday about 1893 for the purpose of obtaining allotments for the various members of the Thursday family, including this defendant; that in payment for said lands Mary Thursday used the Delaware payments of money coming to this defendant, together with the payments due Bill Bob, commonly known as Wild Bill, who is the father of this defendant. That prior to the year 1899 after said Mary Thursday had set apart out of the lands purchased as aforesaid, land for the allotments for the other members of the Thursday family, said Mary Thursday and Wallace Thursday relinquished all their right, title and interest in and to the lands in controversy to this defendant for the purpose of allowing her to select the same as her allotment in the Cherokee Nation, and that ever since said least mentioned date the defendant has been in actual or constructive possession of and the absolute owner of the improvements on the lands in controversy. That this defendant on May 26, 1904, selected said lands as her allotment in said Cherokee Nation and that said lands have been finally allotted to her by the decision of the Honorable Secretary of the Interior in the above mentioned contest case, a copy of which is attached to plaintiff's petition herein, as against the plaintiffs; and that

87.

Said defendant further alleges that plaintiff Harnage in collusion with the said Wallace Thursday and Delokee Gas and Oil Company, a corporation, made various attempts to divest defendants of her right, title and interest in and to the lands in controversy
631 and to prevent her from selecting the same as her allotment in the Cherokee Nation so that said Harnage might himself allot the same; that the purported bill of sale and lease executed on June 10, 1905 between the said Wallace Thursday and said plaintiff Harnage and the purported contract executed by the said parties on June 21st, 1905 with respect to the lands in controversy were not made in good faith but with the fraudulent intent and purpose of divesting defendant Martin of her right, title and interest in and to the improvements on said lands and her right to select the same as her allotment in said Cherokee Nation in order that plaintiff Harnage might thereby unlawfully secure said lands as his allotment in said Cherokee Nation; that the alleged oil and gas mining lease executed on the 6th day of October, 1908 by plaintiff Harnage to the Delokee Gas and Oil Company, a corporation, a copy of which said lease is hereto attached marked Exhibit "C" and made a part of this answer, was also a fraudulent attempt on the part

of the said Harnage to divest this defendant of her right, title and interest in and to said lands. That all of the said above named instruments affecting the title to the land in controversy, are null and void and of no force and effect as against this defendant for the reason that the said Wallace Thursday for himself and as guardian of the said May Thursday and Sam Bob and the said plaintiff Harnage did not have at the time and have never had any right, title or interest in and to said lands or the improvements thereon. That the above and foregoing oil and gas mining lease of the Delokee Gas and Oil Company constitutes a cloud on the title of this defendant in and to the lands in controversy and should be cancelled, set aside and held for naught.

88.

632 Further answering said defendant respectfully avers that this Honorable Court has no jurisdiction or authority to hear and determine the subject matter of this action for the reason that the lands involved in controversy herein comprise under the final decision of the Secretary of the Interior, the allotment of this defendant, Annie Martin, who is a half blood citizen of the Cherokee Nation of Indians, and upon whose allotment restrictions against its alienation or encumbrance still obtain under the Act of Congress approved May 27, 1908 (35 Stat. L. 313). Said defendant further avers that this court is without jurisdiction in this case for the reason that this action is brought for the purpose of reconsidering, reviewing and reversing the decision of the Honorable Secretary of the Interior rendered in Cherokee Allotment Contest Case No. 926 between plaintiff Harnage and this defendant, Annie Martin, as against said plaintiff, and for the reason that said decision of the Secretary of the Interior in said contest case was and is final and conclusive as against said plaintiff, Jesse L. Harnage, by virtue of Section 22 of the Act of Congress, approved August 7, 1902 (32 Stat. L. 716) and for the further reason that said plaintiff has an adequate remedy at law against this defendant.

Wherefore, said defendant having fully answered the petition of plaintiffs herein, prays that she be decreed to be the owner of the legal and equitable title in fee simply in and to said lands; that said plaintiffs and each of them be forever barred and perpetually enjoined from setting up or claiming any right title or interest whatsoever in and to said lands as against this defendant; that the said oil and gas mining lease executed by plaintiff Harnage to Delokee Gas and Oil Company, a corporation, on October 6, 1908, covering said lands and a copy of which is hereto attached, marked Exhibit "C," be cancelled, set aside and held for naught and that this
633 defendant have judgment against plaintiffs for her costs herein most wrongfully expended and for other relief.

J. C. DENTON,

*Assistant United States Attorney, Counsel
for Defendant Annie M. Martin.*

STATE OF OKLAHOMA,
Washington County, ss:

Annie Martin being first duly sworn on oath says that she has read the statements contained in the within and foregoing answer and that the same are true of her own knowledge and belief.

ANNIE M. MARTIN.

Subscribed and sworn to before me this 20th day of October, 1911.

L. C. POLLOCK.

*Clerk of the District Court, Washington
County, Oklahoma,*

By HANK REEVE, *Deputy.*

(80A.)

Homestead Deed 34359. Cherokee Nation. Roll No. 31668.

The Cherokee Nation,
(Formerly Indian Territory,)
Oklahoma.

To All to Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved July 1, 1902 (32 Stat. 716), ratified by the Cherokee Nation August 7, 1902, it was provided that there should be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Nation, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, and,

634 Whereas, it was provided by said Act of Congress that each member of said tribe shall, at the time of the selection of his allotment, designate or have selected and designated for him, from his allotment, land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, as a homestead, for which separate certificate shall issue; and,

Whereas, the said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Annie M. Martin a citizen of said tribe, as a homestead,

Now, therefore, I, the undersigned, the Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey unto the said Annie M. Martin all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz: The East Half of the North West Quarter of the South East Quarter and the South West Quarter of the North West Quarter of the South East Quarter of Section Thirteen (13), Township Twenty-six (26) North and Range Twelve (12) East of the Indian Base and Meridian, in Oklahoma, containing Thirty (30) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the condi-

tion provided by said Act of Congress pertaining to allotted homesteads.

In witness whereof, I, the Principal Chief of the Cherokee Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 31st day of March, A. D. 1909.

W. C. ROGERS,
Principal Chief of the Cherokee Nation.

Department of the Interior.

Approved April 13, 1909.

RICHARD A. BALLINGER, *Secretary*, [SEAL.]
By OLIVER A. PHELPS, *Clerk*.

Filed for record on the 18th day of May 1909, at 3 o'clock P. M.

"EXHIBIT A."

(On the back of said instrument appears the following endorsement:)

Department of the Interior,

Commissioner to the Five Civilized Tribes.

This is to certify that I am the officer having custody of the record of the deeds of the Cherokee Nation and that the above and foregoing is a true and correct copy of the Homestead to Annie M. Martin as the same appears of record in Book 75, page 95 of Cherokee Deed Record.

In testimony whereof witness my hand this 19 day of Oct. 1911.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.

(77 A.)

Allotment Deed 34359. Cherokee Nation. Roll No. 31668.

The Cherokee Nation,

(Formerly Indian Territory,)

Oklahoma.

To All to Whom These Presents Shall Come, Greeting:

Whereas, by the Act of Congress approved July 1, 1902 (32 Stat, 716), ratified by the Cherokee Nation August 7, 1902, it is provided that there shall be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Tribe, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, and,

Whereas, It was provided by said Act of Congress that each citizen shall designate or have designated and selected for him, at the time of his selection of allotment, out of his allotment, as a home-
636 stead, land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, for which he shall receive a separate certificate, and,

Whereas, the said Commission to the Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described has been selected by or on behalf of Annie M. Martin a citizen of said tribe, as an allotment of land equal in value to forty acres of the average allottable lands of the Cherokee Nation, selected as a home-
stead as aforesaid.

Now, therefore I, the undersigned, Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by aforesaid Act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey unto the said Annie M. Martin all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz: The North East Quarter of the South West Quarter, less Three and 8/100 (3.08) acres occupied as Right of Way by the Kansas, Oklahoma Central and Southwestern Railway, and the North West Quarter of the North West Quarter of the South East Quarter of Section Thirteen (13), Township Twenty-six (26) North and Range Twelve (12) East of the Indian Base and Meridian, in Oklahoma, containing Forty-six and 92/100 (46.92) acres, more or less, as the case may be according to the United States survey thereof, subject, however, to all the provisions of said Act of Congress.

In witness whereof, I, the Principal Chief of the Cherokee Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 31st day of March, A. D. 1909.

637

W. C. ROGERS,

Principal Chief of the Cherokee Nation.

Department of the Interior.

Approved April 13, 1909.

RICHARD A. BALLINGER, *Secretary*, [SEAL.]By OLIVER A. PHELPS, *Clerk*.

Filed for record on the 18th day of May 1909, at 3 o'clock P. M.

"EXHIBIT B."

(On the back of said instrument appears the following indorsement:)

Department of the Interior.

Commissioner to the Five Civilized Tribes.

This is to certify that I am the officer having custody of the record of the deeds of the Cherokee Nation and that the above and foregoing is a true and correct Copy of the Allotment to Annie M. Martin as the same appears of record in Book 75, Page 95 of Cherokee Deed Record.

In Testimony whereof witness my hand this 19 day of Oct. 1911.

J. G. WRIGHT,

Commissioner to the Five Civilized Tribes.

"EXHIBIT C."

Oil and Gas Mining Lease.

This indenture of lease, made this 6th day of October, 1908, by and between Jesse L. Harnage of Tulsa, Oklahoma, party of the first part, and The Delokee Gas and Oil Company, a corporation of Bartlesville, Oklahoma, party of the second part:

Witnesseth, that the party of the first part, for and in consideration of the royalties, covenants, stipulations and conditions herein-after contained does hereby demise, grant and let unto the party of the second part, its successors and assigns, for a period of fifteen years from the date hereof, all of the oil deposits and natural gas in or under the following described tract of land, situated in Washington County, Oklahoma, to-wit:

638 The North east quarter (N.E./4) of the South west quarter (S.W./4) less 3.08 acres for the K. O. C. & S. Railroad (now Santa Fe) right of way; and the North west quarter (N.W./4) of the South east quarter (S.E./4) of Section 13, Township 26 North, Range 12 East, containing 76.92 acres, more or less, with the right to prospect for, extract, pipe, store, refine and remove such oil and natural gas, and to occupy so much only of the surface of said land as may be reasonably necessary to carry on such work, including also the right to obtain from wells or other sources on said land a sufficient supply of water to carry on said operations, and also the right to use such oil and natural gas as fuel in so far as it may be necessary to the prosecution of said operations. The party of the second part hereby agrees to pay or cause to be paid to the party of the first part as royalty the sum of ten per cent (10%) of the value on the leased premises of all crude oil produced and saved from said land, such royalty interest to be paid and delivered through the medium of a division order, according to which the said royalty interest

shall be run into the pipe line in the name of and to the credit of the party of the first part.

In the event gas in commercial quantities shall be discovered in or under said land, the party of the second part agrees to pay Fifty Dollars per well per annum for each gas well not utilized, the first payment to be due within thirty days after the discovery of gas, and annually thereafter. In case such well or wells shall be utilized, the party of the second part agrees to pay at the end of each year from the date of the discovery of gas an additional sum of One Hundred Dollars per well. The party of the second part agrees to exercise diligence in the sinking of wells for oil and natural gas on the lands covered by this lease and to operate the same in
639 a workmanlike manner; to commence drilling operations within fifteen days from the date said land shall be freed from litigation in the Department of the Interior, and the title thereto shall be finally and fully vested in the party of the first part; such operations shall continue as rapidly as market conditions will justify, and in all events that all wells on adjoining properties which might possibly drain the above described land shall be promptly offset; that the party of the second part will commit no waste upon said land and take good care of the same, and promptly surrender the same upon the termination of this lease to the party of the first part, or to whomsoever shall be lawfully entitled thereto. That it will not remove therefrom any buildings or improvements erected thereon during said term by the party of the second part, but said buildings and improvements shall remain a part of said land and become the property of the owner thereof as part consideration for this lease, excepting that tools, boilers, boiler-house, pipe line, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry and exhausted wells shall remain the property of the party of the second part and may be removed at any time before the expiration of sixty days from the termination of this lease; that before abandoning any well it will securely plug the same so as to effectually shut off all water above the oil-bearing sand.

This instrument shall extend to and be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto.

In Witness Whereof, the party of the first part has set his hand and the party of the second part has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be hereunto affixed and attested by its Secretary, both of said officers being thereunto duly authorized.

640

JESSE L. HARNAGE,
THE DELOKEE GAS & OIL COMPANY,
By JAMES GRAY, *Vice-President.*

[CORPORATE SEAL.]

Attest:

LESLIE COOMBS, *Secretary.*

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, a Notary Public in and for said County and State, on the 6th day of October, 1908, personally appeared Jesse L. Harnage, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and official seal the day and year last above written.

[NOTARIAL SEAL.]

O. K. EYSENBACH,
Notary Public.

My commission expires May 20, 1911.

STATE OF OKLAHOMA,
County of Washington, ss:

Before me, a Notary Public in and for said County and State, on this 8th day of October, 1908, personally appeared James Gray, to me known to be the identical person who subscribed the name of The Delokee Gas and Oil Company to the foregoing instrument as to Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth.

[NOTARIAL SEAL.]

ETHEL KEHRER,
Notary Public.

My commission expires June 25, 1910.

Filed Oct. 9, 1908 at 1:00 P. M. Fred A. Graybill, Reg. of Deeds, by Ruth G. Reed, Deputy.

641 STATE OF OKLAHOMA,
County of Washington, ss:

I, Fred A. Graybill, Register of Deeds in and for Washington County, Oklahoma, do hereby certify that this instrument is a true and correct copy of an Oil & Gas mining lease, as appears of record in my office in Miscellaneous Record No. 3, page- 126-7-8.

In Testimony Whereof, I have hereunto set my hand and official seal this 20th day of October, 1911.

[SEAL.]

FRED A. GRAYBILL,
Register of Deeds.

(On the back of said Separate Amended Answer, omitting the title of said cause, appears the following endorsement:) Filed Oct. 19, 1911. District Court of Washington County, Oklahoma. L. C. Pollock, Clerk. J. C. Denton, Assistant U. S. Attorney for defendant Annie Martin.

642 That afterwards, to-wit, and on the 26th day of October, 1911, the plaintiff Delokee Gas and Oil Company filed its petition herein against the defendants, which said petition is in words and figures as follows, to-wit:

643 In the District Court of Washington County, Oklahoma.

No. —.

JESSE L. HARNAGE and THE DELOKEE GAS & OIL COMPANY,
Plaintiffs,

VS.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
COMPANY, Defendants.

Petition of Delokee Gas & Oil Company.

Comes now the Delokee Gas & Oil Company, one of the plaintiffs herein, and for its cause of action against the defendants alleges and says: That it is a corporation duly organized and existing under and by virtue of the laws of the Territory of Arizona, and that it has complied with the laws of the State of Oklahoma with respect to its doing business in said State; that its principal place of business in said State is at Bartlesville, Oklahoma.

It further says that it adopts each and every allegation of the petition of its co-plaintiff, Jesse L. Harnage, and makes part of this petition each and every exhibit filed with the petition of its co-plaintiff, Jesse L. Harnage.

It further says that on the 14th day of May, 1904, its co-plaintiff, Jesse L. Harnage, signed, acknowledged and delivered to it an oil and gas mining lease on the lands in question in this suit. A copy of said lease is filed herewith as part hereof marked Exhibit "Q." It says that it has complied in all respects with each of its obligations under said lease except in so far as it was prevented by the various decisions of the Department of the Interior shown in the exhibits filed herewith, which were adverse to its co-

644 plaintiff, Jesse L. Harnage.

Wherefore, It prays that its co-plaintiff, Jesse L. Harnage, be held to be the legal and equitable owner of the lands in controversy in this suit, and that its lease be held to be a good, valid and subsisting oil and gas mining lease on said property, and that the lease of the defendant Roth-Argue-Maire Brothers Oil Company be cancelled, set aside and held for nought, and for all other proper, legal and equitable relief.

VEASEY AND ROWLAND,

Attorneys for The Delokee Gas & Oil Company.

STATE OF OKLAHOMA,

Washington County, ss:

Leslie Coombs, being first duly sworn, states upon oath that he is the Secretary of the Delokee Gas & Oil Company, one of the plain-

tiffs in the above entitled action; that he has read the foregoing petition and knows the entire contents thereof, and that the statements therein made are true.

LESLIE COOMBS.

Subscribed and sworn to before me this 26th day of October, 1911.
[SEAL.] A. G. CRONINGER,

Notary Public.

My commission expires 7-21-1915.

Endorsements: No. 1251. Jesse L. Harnage et al, vs. Annie M. Martin et al. Petition of the Delokee Gas & Oil Company. District Court Washington County, Oklahoma. Filed in Open Court Oct. 26, 1911. L. C. Pollock, Clerk. Veasey & Rowland.

645 That afterwards, to-wit, on the 26th day of October, 1911, the plaintiff Jesse L. Harnage and Delokee Gas and Oil Company filed their joint reply to the amended answer of the defendant Annie M. Martin, which said reply is in words and figures as follows, to-wit:

646 In the District Court of Washington County, Oklahoma.
No. 1251.

JESSE L. HARNAGE and THE DELOKEE GAS & OIL COMPANY, Plaintiffs,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL COMPANY, Defendants.

Joint Reply on Jesse L. Harnage and The Delokee Gas & Oil Company.

The plaintiffs, Jesse L. Harnage and The Delokee Gas & Oil Company, for their joint reply herein, deny each and every material allegation of new matter of the separate amended answer of the defendant Annie M. Martin, except in so far as said allegations of new matter are consistent with the allegations of the petition of these plaintiffs herein.

J. P. O'MEARA,
VEASEY AND ROWLAND,
Attorneys for the Plaintiffs.

STATE OF OKLAHOMA,
Washington County, ss:

Jesse L. Harnage, being first duly sworn, states on oath that he is one of the plaintiffs above named; that he has read the foregoing Joint Reply and knows the entire contents thereof, and that the statements therein are true.

JESSE L. HARNAGE.

661

Subscribed and sworn to before me this 26 day of October, 1911.
[SEAL.]

L. C. POLLOCK,
Clerk of District Court.

Filed in open court Oct. 26, 1911. District Court Washington County, Oklahoma. L. C. Pollock, Clerk.

647 And thereafter, to-wit, and on the 27th day of October, 1911, the same being a juridical day of the September, 1911, Term of the District Court for Washington County, Oklahoma, this cause came on for trial before Honorable R. H. Hudson, Judge.

Appearances:

For plaintiff Jesse L. Harnage: Jesse L. Harnage in person and by attorneys Veasey & Rowland and J. P. O'Meara.

For defendant Annie M. Martin: Annie M. Martin in person and by attorneys Butte, Boone & Lattimore and J. C. Denton.

For defendant The Roth-Argue-Maire Brothers Oil Company: By its attorneys Butte, Boone & Lattimore and J. C. Denton.

By agreement of counsel in open court no testimony in said cause taken, but said cause was submitted by plaintiffs upon the exhibits "A" to "P," inclusive, attached to plaintiff's petition and certified by the Commissioner to the Five Civilized Tribes, to the admission of which exhibits as evidence counsel for defendants agreed, and the deposition of D. H. Bynum which was read in evidence and is as follows, to-wit:

The plaintiffs, in order to maintain the issues on their behalf, offered in evidence Exhibits A to P, inclusive, which were attached to plaintiff's Amended Petition, to the introduction of which the defendants then and there objected upon the ground that the same was irrelevant, incompetent, and immaterial, except that defendants did not object to the said evidence on the ground of the insufficiency of the certificate of the Commissioner to the Five Tribes attached to such evidence, and upon the further ground that this court has no jurisdiction of the subject matter and the parties, and further that the evidence offered does not show that the decision of the Secretary of the Interior, on questions of fact awarding the land in controversy to the defendant, Annie Martin, were induced by fraud or gross mistake, and further that the evidence does not show that upon the facts found, conceded or established without dispute, at the final hearing before the Secretary of the Interior, that the said Secretary fell into clear error in the construction of the law applicable to the case, which caused him to issue patent to the wrong party, which said objections and each of them, the court then and there overruled, to which ruling the defendants duly excepted.

And the plaintiffs, to further sustain the issues on their behalf, introduced and read in evidence the depositions of D. H. Bynum, together with the Exhibits attached thereto in the following words and figures, to-wit:

Deposition of witness taken to be used in an action pending in

the District Court within and for the County of Washington, in the State of Oklahoma, wherein Joe L. Harnage and Delokee Oil & Gas Company were plaintiffs and Annie M. Martin and Roth-Argue-Marie Brothers Oil Company are defendants, in pursuance of the stipulation hereto attached and at the time and place therein stated.

James A. Veasey appearing on behalf of the plaintiffs, and Robert J. Boone and J. C. Denton appearing for the defendants.

And thereupon D. H. BYNUM, a witness on behalf of the plaintiffs, of lawful age being duly sworn, deposeth and saith:

Stipulation.

It is stipulated and agreed by and between counsel herein that the deposition of D. H. Bynum might be taken in this cause at the office of the Commissioner to the Five Civilized Tribes, at Muskogee, Oklahoma, at 2 o'clock P. M. on the 21st day of October, 1911. It is further stipulated that the stenographer taking this deposition may transcribe his notes in regard thereto and that the same may then be read in evidence in this cause without the signature of the witness being subscribed hereto.

Direct examination by Mr. Veasey:

Q. What official position have you with the office of the Commissioner to the Five Civilized Tribes?

A. Chief Clerk.

Q. Do you have the custody of such papers as were filed in connection with the application of Cherokee-Delaware citizens for the certification of their improved surplus holdings under certain Acts of Congress?

A. I have.

Q. I will ask you to examine the instrument which I hand you and state whether or not the same was ever filed with the Commission to the Five Civilized Tribes, if so, when?

A. Yes, the petition was filed with this office on June 30, 1905.

649 Mr. Veasey: I now desire to offer in evidence in connection with the deposition of this witness, the instrument identified by the witness, which purports to be the petition of Wallace Thursday as guardian of Samuel Bob, and Mary Thursday, sworn to on the 29th day of June, 1905, and purporting further to be an application for the certification of certain lands therein described as the surplus holdings of said Samuel Bob and Mary Thursday, and ask that the same be marked "Exhibit A."

Mr. Boone: Is that the original instrument, Mr. Bynum?

The Witness: Yes sir.

Mr. Boone: The defendants object to the introduction of this instrument on the ground that it is irrelevant, and immaterial.

Stipulation.

It is stipulated at this time that the stenographer may make a copy of the instrument referred to, the same to be attached to the deposition of the witness as Exhibit "A."

Q. Mr. Bynum, will you state what action, if any, was taken on this petition either by the Commission to the Five Civilized Tribes or by the Commissioner to the Five Civilized Tribes?

A. The records of the Commission appear to be incomplete as to this point. While there is a carbon copy of a setting of said petition for hearing in the Cherokee Land Office at Tahlequah July 26, 1905, at 8 o'clock A. M., there is no date attached to said notice, nor is there any other record to show that a hearing was had at such time.

650 Q. Mr. Bynum, if the notice described by you had in fact been sent out what evidence would there be in the files of this proceeding showing that the same were sent you?

A. There would be probably registry return receipts, but I do not believe they were inclosed by letter as the notice was complete in itself.

Q. What have you to tell on the question as to whether or not these notices which have just been referred to by you were in fact sent out by the Commission to the Five Civilized Tribes?

A. To the best of my information they were not sent out.

Q. I will ask you to state whether or not you have any record of a hearing had on this application which has been introduced in evidence.

A. There is no record of a hearing on this application, at least so far as the lands in controversy in this case are concerned.

Q. It is true that there is a record of a hearing in the case of other lands in which Mary Thursday was interested and claimed to have the right to segregate the same?

A. There is a record of that.

Cross-examination by Mr. Denton:

Q. Mr. Bynum, what eventually became of the petition filed by Wallace Thursday as legal guardian of Mary Thursday to have certain lands set apart as surplus holdings as a Delaware-Cherokee citizen?

A. There was no action taken by the Commission to the Five Civilized Tribes and the petition appears to have been withdrawn upon application of Sam Bob and Wallace Thursday.

Q. When was the withdrawal of the petition of Sam Bob filed with the Commission?

A. It was filed December 16, 1907.

651 Mr. Denton: I desire to offer in evidence copy of the withdrawal of the petition of Sam Bob filed in the matter of the petition to declare the lands in controversy as the surplus segre-

gation of Mary Thursday filed December 16, 1907, and ask that the same be marked Exhibit No. 1.

Mr. Veasey: Plaintiffs object to the introduction of the instrument referred to in evidence for the reason that the same is incompetent, irrelevant and immaterial.

Q. Mr. Bynum, what disposition was made of the petition to have the lands in controversy declared the surplus holdings of Mary Thursday?

A. As I said before no action was taken by the Commissioner and subsequently applications were filed by Sam Bob and Wallace Thursday for Mary Thursday withdrawing such petitions?

Q. When was the application of Wallace Thursday filed with the Commission?

A. Filed December 5, 1907.

Mr. Denton: Defendants now offer in evidence the withdrawal of the petition referred to by the witness as filed with the Commission on December 5, 1907, and ask that the same be marked Exhibit No. 2.

Mr. Veasey: Objected to as irrelevant, incompetent and immaterial.

Stipulation.

It is hereby agreed between the parties to the above entitled action that the copies of the withdrawal petitions referred to as Exhibits Nos. 1 and 2 and introduced in evidence at this hearing shall be copied in the record herein as evidence in this case.

652 Cross-examination by Mr. Boone:

Q. These withdrawals were made prior to the time of the rendering of the decision by the Commission in the Annie Martin-Harnage contest case were they not?

Mr. Veasey: We object to that as incompetent, irrelevant and immaterial.

A. They were.

Q. Will you state if you know the reason why the petition to set apart certain lands as improved Delaware surplus holdings was or was not passed upon by the Commission?

Mr. Veasey: Now we will object to that question as incompetent, irrelevant and immaterial; and for the further reason that unless the witness' answer to the question is based upon the records of the Commission the same is not admissible in this cause.

A. The records show that owing to the pendency of contest between Hettie and Bob action was suspended on such petition until the case just mentioned should be finally decided and was not finally passed on for the reason that on December 16, 1907, Sam Bob for himself—he having become of age—and on December 5,

1907, Wallace Thursday, as guardian of Mary Thursday, filed motions withdrawing said petition.

Q. Mr. Bynum, what was the practice of the Commission to the Five Civilized Tribes when a petition was filed to certify these improved Delaware surplus holdings as to hearing evidence and what evidence, that is to say on what particular points?

Mr. Veasey: We object to that as irrelevant, incompetent and immaterial.

A. The practice was to set the case for hearing after notifying all parties who appeared to be interested and to develop facts as to ownership of improvements as provided by the Act of April 653 21, 1904, and March 3, 1905, in conformity to those two laws.

Redirect examination by Mr. Veasey:

Q. Mr. Bynum, is your answer to the question as to why the Commission did not pass on this petition of Sam Bob and Mary Thursday based upon the records found in connection with that petition or from other records?

A. It is based upon the information from the contest of Martin vs. Harnage.

Q. Will you state the date of the approval of the two Acts of Congress under which Delaware-Cherokee citizens were given a right to sell their surplus holdings?

Mr. Boone: We object to the question on the ground that it is irrelevant, incompetent and immaterial.

A. I gave the dates a moment ago. I think they are correct without looking them up, April 21, 1904 and March 3, 1905.

Q. Now, state whether or not in practice it was the custom of the Commissioner to set one of these petitions for hearing and to certify the lands if found to be the improvements of the applicant after the expiration of six months from the approval of the second act just referred to in your answer?

A. I could not answer simply from recollection the practice. It was conducted under the law, if there were limitations set why of course they would not certify beyond that period. I am of the opinion that the limitation was upon the petition to sell under the act and not upon the action of the Commission.

Q. To certify?

A. To certify.

Witness excused.

654

EXHIBIT A.

Department of the Interior.
Commission to the Five Civilized Tribes.

In the Matter of the Petition of WALLACE THURSDAY, Guardian of the Person and Estate of Samuel Bob, a Minor, and Mary Thursday, an Insane Person, to Have Designated as the Improved Surplus Holdings of said Samuel Bob and Mary Thursday Certain Lands in the Cherokee Nation.

Petition.

Comes now Wallace Thursday, the legal guardian of the person and estate of Samuel Bob, a minor, and Mary Thursday, a person of unsound mind, and respectfully represents unto the Commission as follows:

That said Mary Thursday and said Samuel Bob are duly enrolled Delaware-Cherokee citizens of the Cherokee Nation.

That Mary Thursday has been an insane person for nineteen years; that she was so adjudged by the United States Court for the Northern Judicial District of the Indian Territory, sitting at Nowata, on the 16th day of May, 1904; and that on the 13th day of September, 1904, your petitioner was appointed the legal guardian of the person and estate of said insane person.

That on or about the 17th day of November, 1903, your petitioner was appointed the legal guardian of the person and estate of Samuel Bob, a minor.

That on or about the 25th day of July, 1893, said incompetent persons acquired the ownership of the improvements upon the following described land in the Cherokee Nation of the Indian
655 Territory, to wit:

N. E./4 of S. W./4, less 3.08 acres K. O. C. & S R. R right of way, and N. W./4 of S. E./4 of Section 13, Township 26 North, Range 12 East, containing 76.92 acres, more or less.

That said incompetent persons retained all title and ownership in and to said improvements on said land and were the owners and in the rightful possession thereof on the 21st day of April, 1904.

That no adverse claim, or claims, of any kind or character have arisen which would be of binding force against said incompetent persons.

Wherefore, your petitioner prays that a day be set at which he shall appear before the Honorable Commission to the Five Civilized Tribes at Tahlequah, Indian Territory, at the land office to make proof hereof, and that upon said hearing the improvements upon the above described land be adjudged and certified as the improved surplus holdings of the said Samuel Bob and Mary Thursday, in order that your petitioner may dispose of the same in the manner provided for in the Acts of Congress approved April 1st, 1904, and

March 3rd, 1905, and the regulations of the Department of the Interior hereunder.

(Signed)

his
WALLACE x THURSDAY.
mark.

UNITED STATES OF AMERICA,

Northern Judicial District, Indian Territory, ss:

On this 29th day of June, 1905, before me a Notary Public in and for the Territory and District aforesaid, duly commissioned, qualified and acting as such, personally appeared Wallace Thursday, to me well known as the person who signed the foregoing petition, and stated on oath that he is the petitioner in the above and foregoing petition; that the same has been read to him, and that

656 it is true in substance and in fact, as he verily believes.

(Signed)

his
WALLACE x THURSDAY.
mark.

Subscribed and sworn to before me this 29th day of June, 1905.

[Seal Margaret N. Dickinson, Notary Public, Northern District Ind. Ter.]

(Signed)

MARGARET N. DICKINSON,
Notary Public.

My commission expires March 10, 1909.

Endorsements: Filed June 30, 1905. Department of the Interior, Commission to the Five Civilized Tribes. Cherokee Land Office. Filed June 30, 1905. Tams Bixby Chairman. Veasey & Rowland, Attorneys at Law, Bartlesville, Ind. Ter.

EXHIBIT No. 1.

Department of the Interior,
Commissioner to the Five Civilized Tribes.

ANNIE M. MARTIN, Contestant,

vs.

JESSE L. HARNAGE, Contestee.

Now comes Samuel Bob and respectfully shows that he is a party to an application to have designated as the surplus improvements of himself and Mary Thursday, the improvements — the following described land situated in the Cherokee Nation of the Indian Territory, to-wit:

657 The Northeast Quarter of the Southwest Quarter, less 3.08 acres for K. O. C. & S. R. R. right of way, and the Northwest Quarter of the Southeast Quarter of Section Thirteen (13) Township Twenty-six (26) North, Range Twelve (12) East of the Indian Meridian.

Your petitioner respectfully moves that in so far as said application applies to himself he desires to have the same withdrawn.

That while this motion is made for the above withdrawal of said application it is not intended to be in any sense prejudicial to the rights of Jesse L. Harnage in the above entitled contest case inasmuch as every effort possible was made to sell said improvements on said land as the surplus holdings of said Mary Thursday to said Jesse L. Harnage.

SAM BOB.

Witness:

L. A. ROWLAND.

STATE OF OKLAHOMA,
County of Washington, ss:

On this 14th day of December, 1907, before me, a Notary Public in and for the State and county aforesaid, personally appeared Samuel Bob, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and official seal this 14th day of December, 1907.

ETHEL KELNER,
Notary Public.

My commission expires June 25, 1910.

Endorsed: Department of the Interior. Commissioner to the Five Civilized Tribes. Filed 12/16/07. J. G. Wright, Commissioner.

658

EXHIBIT No. 2.

Department of the Interior,
Commissioner to the Five Civilized Tribes.

ANNIE M. MARTIN, Contestant,
vs.
JESSE L. HARNAGE, Contestee.

Comes now Wallace Thursday, legal guardian of the person and estate of Mary Thursday, an insane person, and moves the Honorable Commissioner for leave to withdraw from the files of the Commission his application to have the following described lands in the Cherokee Nation of the Indian Territory, to-wit: The Northeast Quarter of the Southwest Quarter less 3.08 acres for K. O. C. & S. R. R. right of way; Northwest quarter of Southeast Quarter of Section Thirteen (13), Township Twenty-six (26) North, Range Twelve (12) East of the Indian Meridian, designated as the surplus Delaware improvements of said Mary Thursday.

That while this motion is made for the above withdrawal of said application it is not intended to be in any sense prejudicial to the

rights of Jesse L. Harnage in the above entitled contest case inasmuch as every effort possible was made to sell said improvements on said land as the surplus holdings of said Mary Thursday to said Jesse L. Harnage.

(Signed) his
WALLACE x THURSDAY,
mark.

*Legal Guardian of the Person and Estate
of Mary Thursday, an Insane Person.*

Witness:-

PEARL FISHER.
JAS. A. VEASEY.

659 STATE OF OKLAHOMA,
County of Washington, ss:

Personally appeared before me, a Notary Public, in and for the state and county aforesaid, Wallace Thursday, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the purposes therein set forth.

In witness whereof, I have hereunto set my hand and official seal this 3rd day of December, 1907.

(Signed)
[SEAL.]

ETHEL KEHRER,
Notary Public.

My commission expires, June 25, 1910.

Endorsed: Department of the Interior. Commissioner to the Five Civilized Tribes. Filed 12/5/07. J. G. Wright, Commissioner.

STATE OF OKLAHOMA,
Muskogee County, ss:

I, Chas. T. Diffendaffer, a Notary Public within and for the County of Muskogee, in the State of Oklahoma, do hereby certify that the above named D. H. Bynum, the witness was by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in the case aforesaid, and that the deposition was reduced to writing by me, and the same was taken on the 21st day of October, A. D., 1911, between the hours of eight o'clock A. M. and 6 o'clock p. m. of the said day and at the office of the Commissioner to the Five Civilized Tribes, in the City of Muskogee, in the County of Muskogee and State of Oklahoma, as specified in the stipulation hereto attached, and that I am not attorney or a relative of
660 either of said parties, or otherwise interested in the event of said action.

[SEAL.]

CHAS. T. DIFFENDAFFER,
Notary Public.

My commission expires Jan. 5, 1914.

Filed October 24th, 1912, District Court Washington County, Oklahoma. L. O. Pollock, Clerk.

Thereupon the defendants filed their written demurrer to the evidence introduced by the plaintiff in said cause, which demurrer is in words and figures as follows, to-wit:

661 In the District Court for Washington County, Oklahoma.

No. 1251.

JESSE L. HARNAGE et al., Plaintiffs,
vs.
ANNIE M. MARTIN et als., Defendants.

Demurrer to Evidence.

Now come the defendants by their attorneys and demur to the evidence herein and for grounds say:

First. That this court has no jurisdiction of the subject matter and the parties, under the evidence.

Second. That the evidence does not show that the decision of the Secretary of the Interior, on question of fact, awarding the lands in controversy to the defendant Annie Martin, were induced by fraud or gross mistake.

Third. That the evidence does not show that upon the facts found, conceded or established without dispute at the final hearing before the Secretary of the Interior, that the said Secretary fell into a clear error in the construction of the law applicable to the case, which caused him to issue the patent to the wrong party.

BUTTE, BOONE & LATTIMORE,
Attorneys for All Defendants.
J. C. DENTON,
Ass't United States Attorney, Special Attorney
for the Defendant Annie Martin.

Endorsements: Jesse L. Harnage et al. vs. Annie Martin et al. No. 1251. Demurrer to Evidence. District Court, Washington County, Oklahoma. Filed in open court Oct. 27, 1911. L. C. Pollock, Clerk. Butte, Boone & Lattimore, J. C. Denton, Attorneys.

662 And thereafter, to-wit, and on the 28th day of February, 1912, the same being a regular juridical day of the January, 1912, Term of the District Court within and for Washington County, Oklahoma, the following further proceedings were had and done and entered of record in said cause herein:

663 In the District Court for Washington County, Oklahoma.

No. 1251.

JESSE L. HARNAGE and THE DELOKEE OIL AND GAS COMPANY,
Plaintiffs,

vs.

ANNIE M. MARTIN and ROTH-ARGUE-MAIRE BROTHERS OIL COM-
PANY, a Corporation, Defendants.

Journal Entry.

This cause coming on before the Court for trial on its regular call on the docket, the plaintiffs Jesse L. Harnage and the Delokee Oil and Gas Company, in person and by their attorneys James A. Veasey and J. P. O'Meara, and the defendants Annie M. Martin and Roth-Argue-Maire Brothers Oil Company, a corporation, in person and by their attorneys Robert J. Boone and J. C. Denton, and both parties announcing ready for trial and waiving a jury and agreeing that the cause be tried to the court:

Thereupon the plaintiffs introduced evidence, tending to to prove the issues of their case and rested.

And thereupon the defendants demurred to the evidence offered by the plaintiffs and the court tentatively overruled the same.

Thereupon the defendants produce their testimony tending to prove the issues on behalf of the defendants and rested their case.

And both parties having announced closed and after arguments of counsel for the respective parties, the said cause was taken under advisement by the court. And now the Court having considered all

664 of the issues in the case and being well and sufficiently advised in the premises, the tentative overruling of the defendants' demurrer to the plaintiffs' evidence was and is hereby ordered withdrawn and the court being of the opinion that the said demurrer should be sustained,

It is therefore hereby ordered, adjudged and decreed, That the defendants' demurrer to the evidence introduced by the plaintiffs be and the same is hereby sustained and this cause dismissed; to which ruling of the court the plaintiffs then and there excepted.

It is further ordered, That the defendants Annie M. Martin and the Roth-Argue-Maire Brothers Oil Company, a corporation, do have and recover of and from the plaintiffs Jesse L. Harnage and the Delokee Oil and Gas Company, their costs herein laid out and expended which is hereby taxed by the Clerk in the sum of — Dollars for which let execution issue; to which ruling of the court the plaintiffs then and there excepted.

The plaintiffs having filed in this court and cause their motion for a new trial herein, the same came on to be heard before the court; all parties being represented before the court and after arguments of counsel and the court being well and sufficiently advised in the premises,

It is hereby ordered, adjudged and decreed, That the motion for new trial be, and the same is hereby denied; to which ruling of the

court the plaintiffs duly excepted and their exceptions were allowed them.

Thereupon the plaintiffs requested that the court make and enter an order allowing them time within which to prepare, serve and have settled a case-made. And it appearing that said application should be granted,

It is therefore hereby ordered, adjudged and decreed, That the plaintiff may have ninety days within which to prepare and
665 serve their case-made; that the defendants may have twenty days thereafter within which to file objections thereto and that the same may be settled upon five days' notice by either party.

Done and ordered at Bartlesville, Oklahoma, in open court this 28th day of February, 1912.

R. H. HUDSON, *Judge*.

O. K.

JAS. A. VEASEY.

J. P. O'MEARA.

Endorsements: No. 1251. Jesse L. Harnage et al., vs. Annie Martin et al. Journal Entry. District Court, Washington County, Oklahoma. Filed in open court Feb. 28, 1912. L. C. Pollock, Clerk. Entered. Veasey, O'Meara & Owen.

666 Said motion for said new trial filed by the plaintiffs herein and referred to in the foregoing journal entry, was filed by the plaintiffs on the 27th day of February, 1912, and is in words and figures as follows, to-wit:

667 In the District Court of Washington County, Oklahoma.

No. 1251.

JESSE L. HARNAGE and DELOKEE OIL AND GAS COMPANY, Plaintiffs,
vs.

ANNIE M. MARTIN and ROTH-ARGUE-MAIRE BROTHERS, a Corporation, Defendants.

Motion for New Trial.

Come now the plaintiffs and move the court for a new trial and as grounds therefor say:

(1) That the decision of the court is not sustained by sufficient evidence.

(2) That the decision of the court is contrary to law.

(3) Because the court erred in sustaining the demurrer of the defendants to the evidence introduced by the plaintiff.

(4) Because of errors of law occurring at the trial and excepted to by the plaintiff.

Wherefore, Plaintiffs pray that the decision heretofore rendered herein be set aside and a new trial hereof had.

J. P. O'MEARA,

VEASEY & ROWLAND,

Attorneys for Plaintiffs.

Filed February 27, 1912, District Court of Washington County, Oklahoma. L. C. Pollock, Clerk. Hank Reeve, Deputy.

668 STATE OF OKLAHOMA,
Washington County, ss:

In the District Court within and for said County and State.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, Plaintiffs,
vs.
ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
COMPANY, a Corporation, Defendants.

Certificate of Attorneys.

We hereby certify that the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered or introduced by both parties, all orders and rulings made and exceptions allowed, and all of the record upon which the judgment and journal entry in said cause were made and entered, and that the same is a full, true, correct and complete case-made.

Witness our hands this 22nd day of May, 1912.

(Signed)

J. P. O'MEARA,

(Signed)

VEASEY AND ROWLAND,

Attorneys for Plaintiffs.

669 STATE OF OKLAHOMA,
Washington County, ss:

In the District Court in and for said County and State.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, Plaintiffs,
vs.
ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
COMPANY, a Corporation, Defendants.

Stipulation of Attorneys.

It is hereby stipulated and agreed by and between the parties hereto —

It is further stipulated and agreed that exhibits "A" to "P" inclusive, to plaintiffs' amended petition as shown in this record, are the exhibits introduced by plaintiff in evidence, and the attorneys for defendants hereby waive the recopying of said exhibits in this rec-

ord as a portion of the evidence introduced by the plaintiffs at the trial hereof and consent that the court may consider exhibits "A" to "P" inclusive, as shown in this record attached to plaintiffs' amended petition as the exhibits introduced by the plaintiffs at the hearing hereof,—the purpose of this stipulation being to obviate the recopying of such voluminous exhibits; and said defendants hereby waive the issuance and service of summons in error from the Supreme Court of the State of Oklahoma.

(Signed) J. P. O'MEARA,
 (Signed) VEASEY AND ROWLAND,
Attorneys for Plaintiffs.
 (Signed) BUTTE, BOONE & LATTIMORE,
 (Signed) ROBT. J. BOONE,
Attorneys for Defendants.

Filed Aug. 16, 1912. W. H. L. Campbell, Clerk.

671 STATE OF OKLAHOMA,
Washington County, ss:

In the District Court in and for said County and State.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, Plaintiffs,
 vs.
 ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
 COMPANY, a Corporation, Defendants.

Service of Case Made.

We, the undersigned attorneys of record for the defendants in the above entitled cause, do hereby acknowledge service of the foregoing case made, this 15th day of May, 1912.

(Signed) BUTTE, BOONE & LATTIMORE,
 (Signed) ROBT. J. BOONE,
Attorneys for Defendants.

672 STATE OF OKLAHOMA,
Washington County, ss:

In the District Court within and for said County and State.

No. 1251.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, Plaintiffs,
 vs.
 ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
 COMPANY, a Corporation, Defendants.

I, the undersigned, judge of the District Court for Washington County, Oklahoma, hereby certify that the foregoing was presented to me as a case-made in the action above entitled.

The plaintiffs appearing by Veasey, O'Meara & Owen, their attorneys.

The defendants appearing by Butte, Boone & Lattimore, their attorneys.

And there being no suggestions of amendments, I now settle and sign the same as a true and correct case-made, and direct that it be attested and filed by the clerk of said court.

Witness my hand at Pawhuska, Osage County, Oklahoma, this the 13 day of August, A. D. 1912.

(Signed)

R. H. HUDSON,
District Judge.

Attest:

[SEAL.]

L. C. POLLOCK,
Clerk District Court,
By HANK REEVE, *Deputy.*

Filed this 14th day of Aug., A. D. 1912. (Signed) L. C. Pollock,
Clerk, (Cignend by Hank Reeve, Deputy.

673 In the Supreme Court of the State of Oklahoma.

No.—.

JESSE L. HARNAGE, Plaintiff in Error,
v.
ANNIE MARTIN et al., Defendants in Error.

Notice to Counsel of Filing Motion to Advance.

To Messrs. Veasey, O'Meara & Owen, Attorneys of Record for the Plaintiff in Error:

You will please take notice that we have filed in the above court and cause a motion to advance this cause on the docket, together with an affidavit attached thereto, a copy of which said motion and affidavit is attached to this notice.

Please govern yourselves accordingly.

(Signed)

BUTTE, BOONE & LATTIMORE,
Attorneys for Defendants in Error.

Service of above motion accepted this 24th day of Feb'y 1913.

(Signed)

VEASEY, O'MEARA & OWEN.

674 In the Supreme Court of the State of Oklahoma.

No.—.

JESSE L. HARNAGE, Plaintiff in Error,
v.
ANNIE MARTIN et al., Defendants in Error.

Motion to Advance Cause on Docket.

Now comes Annie Martin et al., the defendants in error, by Butte, Boone & Lattimore, their attorneys, and move the court to advance this cause upon the docket for an early hearing because of the facts stated in the attached motion and in furtherance of the requirements of the public interest.

Dated this February 12, 1913.

(Signed) BUTTE, BOONE & LATTIMORE,
Attorneys for Defendants in Error.

675 In the Supreme Court of the State of Oklahoma.

No. —.

JESSE L. HARNAGE, Plaintiff in Error,
v.
ANNIE MARTIN et al., Defendants in Error.

Affidavit.

STATE OF OKLAHOMA,
County of Washington, ss:

Before me personally came this day Annie Martin, who being duly sworn, upon oath says that she is the principal defendant in the above entitled cause and is the same party described in said proceedings as the holder of the legal title and the allottee of the following described lands, located in Washington County, Oklahoma, to-wit:

Northeast Quarter of Southwest Quarter, less 3.08 acres, K. O. C. & S. R. R. Right of Way, and Northwest Quarter of Southeast Quarter of Section Thirteen (13), Township Twenty-six (26) North, Range Twelve (12) East, containing 76.92 acres, more or less;

That the above tract of land is a part of the Mary Thursday allotment and that said Mary Thursday was the grandmother of your said affiant; that said affiant was born on a portion of the lands now in controversy, about the year 1879, and that said affiant lived there all the time until her father died and your affiant's father was buried on this same home place, the land in controversy being a portion of the original home holdings. The place was commonly

known as the Mary Thursday place, although my father lived on the place with his mother, Mary Thursday, and that was known and recognized as his home. After the death of my father, while I was young, there was an old man by the name of Frenchman, who 676 seemed to take a great liking to me and took me against my wishes away from the home place and sent me off to school. After I returned from school I was married, in 1898, to George W. Martin. My grandmother told me that she had drawn my father's money and spent it for the farm and maintaining the family and she said I had a right to get my allotment there with the rest of the family. I went back and forth to the land both before and after I was married, before allotment, and my grandmother, Mary Thursday, often told me not to bother about getting my other land; that my land was right there with Sam Bob, and they would guarantee me that I would get it when the time came, and for me not to worry about looking for other land.

On the 26th day of May, 1904, I made application to the Commissioner of the Five Civilized Tribes at the Cherokee land office, to take in allotment for myself the lands above described, and it then appeared of record that on the 5th day of May, 1904, about three weeks prior thereto, the land had been selected by Wallace Thursday for himself, and on May 13, 1904, by Jesse L. Harnage, for himself, the Jesse L. Harnage being the plaintiff in error in this cause, so that the only thing left for me to do was to file a contest against them both, which I did, and which is now shown at pages 50 and 51 of Exhibit A to the petition in error; this contest being filed on the 26th day of May, 1904. Subsequent to that time, there was a hearing before the Commissioner to the Five Civilized Tribes and I was awarded this tract of land in the contest, on the 2nd day of January, 1908. From that decision an appeal was taken by Harnage to the Commissioner of Indian Affairs and by the Commissioner of Indian Affairs decided in my favor, on May 25, 1908, and from the Commissioner of Indian Affairs an appeal was taken by Harnage, the plaintiff in error, here, to the Honorable Secretary of the Interior, and on October 10, 1908, the Secretary 677 of the Interior affirmed the Commissioner of Indian Affairs and in his decision used this language, "The Department is thoroughly convinced that the contestee's claim is purely speculative and without merit; that he has, at best, but a naked paper title to the land, unsupported by any right or equity, and that he has permitted himself to be a party to a series of transactions which were morally wrong." Subsequent to this decision there was a motion for review filed by Harnage and his counsel, which was passed upon on December 5, 1908, by the Honorable Secretary of the Interior, again re-affirming the title of your affiant, and again calling attention to the fact that Harnage had permitted himself to be a party to a series of transactions which were morally wrong. Subsequent to this decision the plaintiffs in error filed suit in the United States Circuit Court for the Eastern District of Oklahoma to have your affiant declared a trustee for the use and benefit of the plaintiff in error, and to which action the said court sustained your

affiant's demurrer and dismissed the same. Subsequent thereto an action was brought in the District Court for Washington County, Oklahoma; after a hearing and trial in the District Court in which all the matters were thoroughly gone into and thrashed out, the District Court rendered judgment against the plaintiff and in short, affirmed the action of the Department of the Interior, and from this judgment in favor of the defendant and this affiant, an appeal has been made to this court.

Your affiant is the mother of several children, being — in number, the offsprings of her marriage with George W. Martin; that your affiant has not been in good health for several years and that her husband, George W. Martin, is unable to do manual labor and is constantly under the care of a physician, suffering with something like a tubercular trouble; that your affiant and her husband
678 are now living on the property in controversy, have built

them a small house thereon, which was done several years ago, when her husband was in condition to do manual work, and at that time they also planted out a small fruit orchard on the place; that your affiant and her husband both attempt to raise a small farm on this place, although with their large family and their poor health, the most of the work having to be done by your affiant, they are not able to make current expenses for food and clothing, to say nothing of doctor's bills and medicine; that neither your affiant nor her husband are competent to do any class of work other than manual labor and it is only at great intervals that they are then able to do manual labor; that neither of them have any property other than this tract of land; that they are now heavily indebted owing the taxes on this tract of land, amounting to \$27.71 for the year 1912; a bill for medical attendance to Dr. W. E. Rammel in the sum of \$80.00; the Eureka Drug Company for prescriptions, \$17.90, and to their grocer, A. C. Easter, for groceries, in the sum of \$44.80, all of which items are past due and which your affiant or her husband is unable to pay; that she cannot make a mortgage upon the property in controversy to liquidate her indebtedness because of the fact that it is in litigation; that there is an oil and gas mining lease upon the lands in controversy, having been made several years ago, and under which lease several oil wells have been completed and the royalties thereof are now being paid to the United States Indian Agency at this place, which Agency refuses to deliver the royalties to your affiant until after the determination of the litigation in controversy. That if the litigation herein could be heard and disposed of speedily, your affiant would derive from the oil royalties now accrued and on hand in the United States Indian

Office a sufficient amount to liquidate all of her debts and to
679 place her in position to get proper medical attention for herself and husband, and that unless some redress is given to them in the near future, they will be obliged to seek relief from the paupers' fund of Washington County, the county in which they reside; that in view of all the facts and circumstances surrounding this case, your affiant believes that it would be not only a matter

to them personally but a public interest that this litigation should be set for an early hearing before Your Honorable Court.

(Signed)

ANNIE MARTIN.

Subscribed and sworn to before me this 15 day of February, 1913.

(Signed)

FAMIE CATO,

[SEAL.]

Notary Public.

My commission expires May 29, 1916.

Endorsements: No. 4284. Jesse L. Harnage, Plaintiff in error, v. Annie Martin et al., Defendants in error. Sustained. Set for June Term. Motion to Advance and Notice to Counsel of Filing Motion to Advance. Filed Feb. 25 1913. W. H. L. Campbell, Clerk: Butte, Boone & Lattimore, Attys. for defendants in error.

680 Be it remembered, that on the 4th day of March, 1913, said day being a regular day of the December term, 1912, of the Supreme Court of the State of Oklahoma, there was made and entered in said cause, by said Court, the following Journal Entry, which Journal Entry is recorded in Record No. 6, at page 54 thereof, of the records of the proceedings of said Court, in the office of the Clerk of the Supreme Court of the State of Oklahoma, said Journal Entry being in words and figures as follows, to-wit:

Supreme Court, December Term, 1912, March 4th, 1913, Twenty-Fifth Judicial Day,

4284.

JESSE L. HARNAGE, Plaintiff in Error,

VS.

ANNIE MARTIN et al., Defendants in Error.

And now on this day it is ordered by the court that the motion filed herein to advance the above cause on the docket of this court, be, and the same is hereby sustained, and the cause is set for the June 1913 term of Court.

681 In the Supreme Court of the State of Oklahoma.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, a Corporation,
Plaintiffs in Error,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROS. OIL Co.,
a Corporation, Defendants in Error.

Motion for Oral Argument.

Come now the attorneys for the Plaintiffs in error, and move the court that this cause be set for oral argument on the 10th day of June, 1913, the time set for the submission of said cause.

(Signed)

VEASEY, O'MEARA & OWEN,

Attorneys for Plaintiffs in Error.

Endorsements: No. 4284. Filed Apr. 9, 1913. W. H. L. Campbell, Clerk.

682 In the Supreme Court of the State of Oklahoma.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL Co., a Corporation,
Plaintiff in Error,

v.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROS. OIL COMPANY, a Corporation, Defendants in Error.

Stipulation for Filing Brief Out of Time.

It is hereby agreed by and between the attorneys for the respective parties that the defendants in error may have until the first day of June, 1913, within which to file their printed brief in this court.

Dated at Muskogee, Oklahoma, this 7th day of May, 1913.

(Signed)

VEASEY, O'MEARA & OWEN,

Attorneys for Plaintiffs in Error.

(Signed)

BUTTE, BOONE & LATTIMORE,

Attorneys for Defendants in Error.

Endorsements: No. 4284. Jesse L. Harnage et al., Plaintiffs in error, v. Annie M. Martin et al., Defendants in Error. Stipulation for filing brief out of time. Filed May 14 1913. W. H. L. Campbell, Clerk. Butte, Boone & Lattimore, Attys. for defendants in error.

683 Be it remembered, that on the 14th day of June, 1913, said day being a regular day of the June Term, 1913, of

the Supreme Court of the State of Oklahoma, there was made and entered in said cause, by said Court, the following Journal Entry, which Journal Entry is recorded in Record No. 6, at page 190 thereof, of the records of the proceedings of said Court, in the office of the Clerk of the Supreme Court of the State of Oklahoma, said Journal Entry being in words and figures as follows, to-wit:

Supreme Court, June Term; 1913, June 14th, 1913, Fifth Judicial Day.

4284.

JESSE L. HARNAGE et al., Plaintiffs in Error,
vs.
ANNIE MARTIN et al., Defendants in Error.

And now on this day the above cause is argued orally and the cause is submitted on the record, briefs and oral argrument, and it is ordered by the court that plaintiffs in error be allowed 10 days to file supplemental briefs.

Be it remembered, that on the 28th day of October, 1913,
684 said day being a regular day of the September Term, 1913, of the Supreme Court of the State of Oklahoma, there was made and entered in said cause, by said Court, the following Journal Entry, which Journal Entry is recorded in Record No. 6, at page 335 thereof, of the records of the proceedings of said Court, in the office of the Clerk of the Supreme Court of the State of Oklahoma, said Journal Entry being in words and figures as follows, to-wit:

Supreme Court, September Term, 1913, October 28th, 1913, Twentieth Judicial Day.

4284.

J. L. HARNAGE et al., Plaintiffs in Error,
vs.
ANNIE M. MARTIN et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby affirmed. Opinion by Hayes, C. J.

All the Justices concur.

In the Supreme Court of the State of Oklahoma.
No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, Plaintiffs
in Error,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
Co., Defendants in Error.

685

(Filed Oct. 28, 1913.)

Syllabus.

1. Courts of equity have jurisdiction, after the Commission to the Five Civilized Tribes and the Secretary of the Interior have exercised their powers and exhausted their jurisdiction, to determine whether by error of law, or through fraud or gross mistake of fact, the Commission or the Secretary of the Interior has failed to allot land in the Cherokee Nation to the citizen, who, under the law and the treaties, was entitled to the same.
2. Whether or not there was any evidence to sustain a finding of fact made in a contest before the Commission and the Secretary of the Interior, involving the rights of two different Indians to select certain lands, is a question of law; and an error in that respect which results in the issuance of a patent to the wrong party may be remedied by a proceeding in equity.
3. The evidence reviewed and held sufficient to sustain the finding of fact made by the Secretary of the Interior and the Commission in a contest before them.

Error From the District Court of Washington County.

R. H. Hudson, Trial Judge.

Affirmed.

Veasey, O'Meara & Owen, Attorneys for Plaintiffs in Error.
Robert J. Boone, Attorney for Defendants in Error.

686 Opinion of the Court by HAYES, C. J.:

This is an appeal from a judgment of the district court of Washington county, sustaining a demurrer to the evidence of plaintiffs in error, plaintiffs below, and dismissing their petition and rendering a judgment against them in favor of defendants in error, defendants below.

Plaintiff, Harnage, and defendant, Martin, are duly enrolled members of the Cherokee Tribe of Indians, and this suit was brought by Harnage in the court below to charge the lands in controversy

with a trust in his favor for the alleged reason that in a contest case before the Department of Interior, involving the right to select said lands as an allotment, the Secretary of the Interior committed errors of fact and law, by reason whereof he awarded the lands in controversy to defendant Martin as a portion of the allotment to which she was entitled as a member of said tribe of Indians; when, under the facts established and the law applicable thereto, plaintiff contends such lands should have been awarded to him. Plaintiff, Delokee Gas & Oil Company, claims interest in said land by virtue of a gas and oil lease from its co-plaintiff, Harnage. Defendant, Roth-Argue-Maire Brothers Oil Company claims a like interest under a similar lease from defendant Martin. It is therefore unnecessary to make further reference to the interests of these two companies in the consideration of the case.

Plaintiff made part of his petition and introduced at the trial all the records in a contest case, which was instituted and tried before the Department of Interior for the purpose of determining whether he or defendant was entitled to select the land in controversy as an allotment. On the 13th day of May, 1904, plaintiff made application to the Commission of the Five Civilized Tribes to have allotted to him the land in controversy, and such application was granted.

Thereafter, on the 26th day of May, 1904, defendant made a similar application to the Commission of the Five Civilized Tribes, which was refused; whereupon, on the same day she

687 instituted a contest proceeding before the Commission to the Five Civilized Tribes against the allotment theretofore made to defendant. The trial before the Commission to the Five Civilized Tribes resulted in a decision in favor of defendant in this case, plaintiff in the contest. From this decision an appeal was taken to the Commissioner of Indian Affairs, where a like decision and judgment was rendered, which, on the appeal to the Secretary of the Interior, was affirmed. The trial court had before it the entire record and all the evidence upon which the decisions of the Commission to the Five Civilized Tribes and the Commissioner of Indian Affairs and the Secretary of the Interior were rendered; and in addition thereto, certain additional evidence in the form of depositions, which need not be noticed here.

Plaintiff urges that the action of the trial court in sustaining a demurrer to his evidence was erroneous, upon three different grounds, and for such reason should be reversed. Under the view we take of the case, it will be necessary to consider only the first proposition advanced by plaintiff, which is that since plaintiff made the first selection of the land in controversy as a part of his allotment and such fact appears without dispute in the record before the Secretary of the Interior and in the evidence before the trial court, and that there being no evidence whatever to the effect that at the time of the prior selection by plaintiff defendant was the owner of the improvements of the land in controversy, the court erred in not finding the issues for plaintiff. There is no contention that the decision of the Department of the Interior was fraudulently rendered, or that any fraud was exercised by defendant in procuring it. The power of the

688 courts, where the Department of Interior has awarded to a member of the Five Civilized Tribes certain land as his allotment and patent therefor has been issued to him, to deter-

mine the rights of a contestant to such land was decided in *Garrett v. Walcott*, 25 Okl. 574, wherein it was held that the jurisdiction of the Commissioner of Indian Affairs and of the Secretary of the Interior and the effect of their action on the allotment of the lands of such Indians are the same in effect as the jurisdiction and effect of the Land Department of the United States in the disposition of the public lands within its control. The law applicable to the Land Department and involved in this case is accurately stated in *Howe v. Parker* (C. C. A.) 190 Fed. 738, in the following language:

"The Land Department of the United States is a quasi judicial tribunal, invested with authority to hear and determine claims to the public lands subject to its disposition and its decisions of the issues presented at such hearings are impervious to collateral attack. But its judgments and patents do not conclude the rights of claimants to the land. They rest on established principles of law and fixed rules of procedure, the application of which to each case conditions its right decision, and if the officers of the Land Department are induced to issue a patent to the wrong party by an erroneous view of the law or by a gross mistake of the facts proved, or by a decision induced by fraud, the rightful claimant is not remediless. He may in a court of equity avoid the effect of the decision and the patent and charge the legal title derived from it with a trust in his favor."

By Section 11 of an act of Congress, approved July 1, 1902 (32 U. S. Stat. at L. p. 716), it is provided that there shall be allotted by the Commission of the Five Civilized Tribes to each enrolled member of the tribe lands equal in value to 110 acres of the average allotable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which lands may be selected by each allottee so as to include his improvements. By section 18 of the same act it is made unlawful after ninety days after the ratification of the act for the member of the tribe to enclose or hold in his possession more land in value than 110 acres of the average allotable lands of the

689 Cherokee Nation, either for himself or his wife or for each of his minor children. These provisions of the act clearly contemplate that any member of the tribe shall have a right to select as his allotment lands upon which he owns the improvements, and that his wife and minor children shall have the right to select as their allotments lands upon which he owns the improvements; and that after ninety days after the ratification of the act, the fact that an Indian has theretofore owned the improvements and held possession of lands in acreage in excess of what he is entitled to take as allotment for himself, his wife and his minor children shall not preclude others from taking such land as their allotment, because it is made unlawful for a member of the tribe, although he owns the improvements, to hold the lands, unless needed as allotment for himself, or his wife and minor children.

Plaintiff in the instant case filed first upon the lands in controversy. Defendant was entitled to prevail in the contest, only by showing that she had some preference right to select the lands in controversy as a portion of her allotment; that she was the owner of the improvements and entitled to the benefits of the provisions of

section 11, securing her the right to select the lands whereon she owned the improvements as her allotment. It is the contention of plaintiff that there was not any evidence before the Department to establish this fact. Defendant's first contention is, that in the absence of fraud, the courts cannot inquire as to whether there was any evidence to support the finding of fact of the Department upon which the contest case was determined. This contention, we think is settled by decisions of this court, as well as by the decisions of the Federal courts. In *Jordan v. Smith*, 12 Okl. 703, it was said:

"So far as the courts are concerned the findings of fact by the land department in a contest proceeding are as conclusive and binding upon the courts as the verdict of a jury in their own tribunal and the only inquiry the court can make is, was there any evidence on which to base the finding."

690 See also, *Paine v. Foster*, 9 Okl. 213.

In *Lowe v. Parker*, supra, Judge Sanborn, who delivered the opinion for the court, said:

"Whether or not the weight of evidence in substantial conflict sustains the one or the other side of an issue of fact is a question upon which, in cases within his jurisdiction the final decision of the Secretary of the Interior is conclusive in the absence of fraud or gross mistake. But whether or not there is at the close of a final trial or hearing before him any evidence to sustain a charge or a finding of fact in support of it, is in his and in every judicial and quasi judicial tribunal, a question of law."

In support of this statement of the law numerous authorities are cited. If the Secretary of the Interior in rendering his decision assumed a fact established which was necessary to the rights of the prevailing party, but which there was wanting any evidence to support, the error committed by him was one of law, and plaintiff may have it reviewed by a court of equity in a proceeding brought to avoid the effect of the decision of the Secretary of the Interior.

The facts found in the contest case by the Commission to the Five Civilized Tribes, by the Commissioner of Indian Affairs and by the Secretary of the Interior, although not stated by these respective officers in the same language, are substantially the same. The land in controversy constitutes part of a large tract known as the Thursday place and was held at the time of the institution of the contest case and had been for several years prior thereto by a family of which Mary Thursday, the grand-mother of defendant, is the Indian head. The southern portion of the said place was held and occupied by this family for several years prior to 1893. Whether this portion of the place was originally acquired by the family through purchase or original segregation, the evidence is not clear. In 1893, Mary Thursday purchased the improvements upon the northern part of said place, which embraces the land in controversy. She paid therefor the sum of \$800, which payment she made out of funds received by her as payments to her as a member of the

Indian tribe, and to her *her* Grandson, Samuel Bob, the
691 brother of defendant; and a bill of sale was executed by Mary Thursday and said Samuel Bob for said improvements,

Both of defendant's parents died prior to 1890. Before their death, for a number of years, she and her parents resided with her grandmother, Mary Thursday. Subsequent to her parents' death, she continued to reside for a time with her grandmother. Samuel Bob, defendant's brother, continued to reside at the same place until he became of age. Within a year or two after the death of her parents, defendant was stolen from her home with her grandmother by a man by the name of Frenchman, by whom she was kept and with whom she resided until she went away to school. In 1898, when she was about eighteen years old, she married George Martin, her present husband, with whom she has since resided. Defendant's grandmother, during the time she lived with her, collected defendant's payments from the government to which defendant was entitled as a member of the Indian tribe, and which the grandmother collected as the Indian head of the family, of which defendant was then a member. During the foregoing mentioned time, one Wallace Thursday, the stepgrandfather of defendant, resided at the home of Mary Thursday. In 1899, about a year after defendant's marriage, while she and her husband were visiting at the Thursday home, her grandmother told her that she need not look elsewhere for lands to allot; that there was sufficient in the home place for her; and that she could select her allotment out of the lands in that place; that the family would remain in possession of the same until time to make the allotment, but that there were sufficient lands there for the grandmother and defendant's brother, Samuel Bob, who had theretofore been a member of the family, and the defendant, and gave her the right to select her allotment out of said place.

The evidence establishes that conversations to the foregoing effect were had between defendant, her husband and the grandmother, or with the step-grandfather at different times. Prior to the 692 time defendant filed her contest, Mary Thursday had selected her allotment in the southern part of the home place, and Samuel Bob had selected his in the northern part, and the land lying between these two allotments was left for defendant, which, when she made application to allot, she found to have already been allotted to plaintiff; and she thereupon instituted her contest. The evidence is conflicting relative to some of the facts stated above, but with the substantial conflict in the evidence, this court has nothing to do. It is true that the evidence does not disclose that there was ever any formal conveyance of the improvements upon the identical land in controversy made by Mary Thursday to defendant; but it is clear from the evidence that Mary Thursday intended, in consideration of the fact that she had collected and expended in establishing and maintaining the home, moneys to which defendant was entitled and received as a member of the Indian tribe, and out of affection and love she bore for the daughter of her deceased son, to provide for her an allotment, and that she gave to defendant the right to take her allotment out of said lands; and in giving her such right, gave her every interest therein necessary to effectuate the allotment, which included the improvements thereon. There

was no law that required that such gifts or conveyances or improvements upon lands of the tribe held by an individual Indian before allotment should be made by written contract or conveyance. After a careful review of the evidence before the Secretary of the Interior, we are of the opinion that it is sufficient to establish that defendant had such an interest in the improvements upon the land in controversy as entitled her, under the provisions of the statute above referred to, to select these lands as her allotment. Plaintiff
693 does not claim that he ever acquired this right from her, or that she ever conveyed it to others.

Other questions are presented by this appeal; but, since our view upon this one question requires affirmance of the judgment of the lower court, it is unnecessary to consider them.

The judgment of the trial court is affirmed.

All the Justices concur.

694 In the Supreme Court of the State of Oklahoma.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, Plaintiffs
in Error,

vs.

ANNIE M. MARTIN and THE ROTH-ARGUE-MAIRE BROTHERS OIL
Co., Defendants in Error.

Petition for Rehearing.

Come now the plaintiffs in error by their counsel, Veasey, O'Meara & Owen, and move the court for a rehearing herein, and as grounds therefor say:

First.

That in the opinion of the court herein, the court holds that in 1899 Mary Thursday, the grand-mother of Annie M. Martin, one of the defendants in error, gave to Annie M. Martin such right in the improvements upon the lands in controversy as created in her the preferential right to select the lands in controversy in allotment. In so holding, the court erred in the following particulars:

(a) At the time in question, as is shown without contradiction in the record, Mary Thursday was a person of unsound mind and therefore incompetent, under the law, to make such a grant;

(b) At the time of such alleged gift, and at all times subsequent thereto until the selection of the lands in controversy by the plaintiff in error Harnage, Samuel Bob, a minor, was the owner
695 of an undivided interest in such improvements which ranged in extent from an undivided one-half interest therein to an undivided three-fourths interest therein. As to this, there is no contradiction in the evidence and the court erred in holding that Mary Thursday, an insane person, could grant to the defendant in error Martin this interest of the minor Samuel Bob.

Second.

The court, in said opinion, held: "Plaintiff does not claim that he ever acquired this right (the improvements) from her, or that she ever conveyed it to others." This holding of the court is not sustained by the record. Pages 93 to 101, inclusive, of the brief of plaintiffs in error assert the contention that the plaintiff in error Harnage acquired the equitable title to the specific improvements on the lands in controversy under order of the United States Court for the Northern Judicial District for Indian Territory, in pursuance of the Acts of Congress therein referred to, such equitable title having been acquired by the guardian of Mary Thursday, an insane person, and the guardian of Samuel Bob, a minor, who were the owners of such improvements.

Wherefore, the matters referred to above having been overlooked by the court in its decision, plaintiffs in error pray that a re-hearing be granted herein.

(Signed)

JAS. A. VEASEY,
Counsel for Plaintiffs in Error.

We hereby accept service of the above and foregoing notice, this 8th day of November, A. D. 1913.

(Signed)

BUTTE, BOONE & LATTIMORE,
Counsel for Defendants in Error.

(Endorsed:) #4284. Filed Dec. 10, 1913. W. H. L. Campbell, Clerk.

696 Be it remembered, that on the 27th day of January, 1914, said day being a regular day of the January Term, 1914, of the Supreme Court of the State of Oklahoma, there was made and entered in said cause, by said Court, the following Journal Entry, which Journal Entry is recorded in Record No. 6, at page 446 thereof, of the records of the proceedings of said Court, in the office of the Clerk of the Supreme Court of the State of Oklahoma, said Journal Entry being in words and figures as follows, to-wit:

Supreme Court, January Term, 1914, January 27th, 1914, Eleventh Judicial Day.

4284.

JESSE L. HARNAGE et al., Plaintiffs in Error,

vs.

ANNIE M. MARTIN et al., Defendants in Error.

And now on this day the petition for rehearing filed herein, be, and the same is hereby ordered overruled.

697 Filed Mar. 22, 1915. William M. Franklin, Clerk.

In the Supreme Court of the United States of America.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, a Corporation, Plaintiffs in Error,

vs.

ANNIE M. MARTIN and ROTH, ARGUE & MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

Citation.

To Annie M. Martin and Roth, Argue and Maire Brothers Oil Company, Greetings:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Oklahoma, wherein Jesse L. Harnage and Delokee Gas & Oil Company are Plaintiffs in Error and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiffs in Error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. J. Kane, Chief Justice of the Supreme Court of the State of Oklahoma, this 13 day of March, in
698 the year of our Lord one thousand nine hundred and fifteen.

[Seal Supreme Court, State of Oklahoma.]

M. J. KANE,
Chief Justice.

Copy of the within citation received at my office this 16th day of March, 1915.

ROBT. J. BOONE,
*Attorney for Defendants in Error, Annie M. Martin
and Roth, Argue & Maire Brothers Oil Company.*

Filed Mar. 22, 1915. William M. Franklin, Clerk.

699 Filed Mar. 9, 1915. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, a Corporation, Plaintiffs in Error,

vs.

ANNIE M. MARTIN and ROTH-ARGUE-MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

Petition for Writ of Error.

The petition of Jesse L. Harnage and Delokee Gas & Oil Company a corporation, hereby sets forth that on or about the 28th day of October, A. D. 1913, the Supreme Court of the State of Oklahoma made and entered a final order and judgment herein in favor of the Defendants in Error, Annie M. Martin and Roth-Argue-Maire Brothers Oil Company, a corporation, in which final order and judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of the Plaintiffs in Error, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Petitioners state that the said Supreme Court of the State of Oklahoma is the highest court of said state of Oklahoma in which a decision in this suit and this matter could be had and state further that in said cause there was drawn in question the construction of a statute of the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said statute, in consequence of which a manifest error has happened to the great damage of the said Jessie L. Harnage and Delokee Gas & Oil Company, as by their complaint appears.

Wherefore Plaintiffs in Error pray that a writ of error from the Supreme court of the United States may issue in this behalf to the Supreme Court of Oklahoma for the correction of errors so complained of and that a transcript of record, proceedings, and
700 papers in this cause duly authenticated may be sent to the Supreme Court of the United States.

Dated this 14th day of December, 1914.

JAS. A. VEASEY,

L. A. ROWLAND,

Attorneys for Plaintiffs in Error.

701 Filed Mar. 9, 1915. William M. Franklin, Clerk.

In the Supreme Court of the United States of America.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, a Corporation,
Plaintiffs in Error,

vs.

ANNIE M. MARTIN and ROTH, ARGUE & MARIE BROTHERS OIL
COMPANY, a Corporation, Defendants in Error.

Assignment of Errors.

Now comes the Plaintiffs in Error and respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Oklahoma, in the above entitled matter there is manifest error in this, to-wit:

First. Said Court erred in holding and deciding that the Plaintiff in Error, Harnage, a citizen of the Cherokee Indian Nation, was not entitled to have a trust declared in his favor in lands patented to the Defendant in Error, Martin, also a citizen of said Nation, by virtue of the fact that the record herein discloses that said Harnage made a prior selection of said lands in allotment, and inasmuch as the record further discloses that at the time of such prior selection by Harnage, the defendant in Error, Martin, was not the owner of the improvements on said lands. That, accordingly, the Plaintiff in Error, Harnage, was deprived of a title, right, privilege, or immunity claimed by virtue of an Act of Congress approved July 1, 1902, 32 Stat. L. 716, and said decision was against the title,
702 right, privilege or immunity claimed by said Harnage under said Act.

Second. Said Court erred in holding and deciding that the Plaintiff in Error, Harnage, was not entitled to have a trust declared in his favor in lands patented to the Defendant in Error, Martin, by virtue of the fact that the record herein discloses that said Harnage was the owner of the improvements upon said land, and, therefore, entitled to select the same in allotment, by virtue of the provisions of an Act of Congress approved March 2, 1907: 34 Stat. L. 1220. That, accordingly, the Plaintiff in Error, Harnage, was deprived of a title, right, privilege or immunity claimed by virtue of said Act and said decision was against the right, title, privilege or immunity claimed by said Harnage under the provisions thereof.

Third. Said Court erred in holding and deciding that the Defendant in Error, Martin, was entitled to a patent from the Cherokee Nation covering the lands in controversy herein, when under various Acts of Congress relating to the allotment of lands of the Cherokee Nation among the citizens thereof in severalty the Plaintiff in Error, Harnage, was entitled to a patent from the Cherokee Nation covering said lands, in consequence of which said Harnage was deprived

of a title, right, privilege or immunity claimed by virtue of said Acts, and said decision was against said rights of said Harnage claimed thereunder.

Fourth. That under said Acts of Congress a preferential right vested in a Cherokee citizen to select a particular tract of land in allotment arose only when such citizen was the owner of the improvements upon said tract and as there was no evidence in the record herein to the effect that the Defendant in Error, Martin, was the owner of the improvements upon the lands in controversy herein at the time of the prior selection of the same by the Plaintiff in Error, Harnage. The said Court erred in affirming the judgment of the Trial Court sustaining a demurrer to the evidence of the Plaintiff in Error, Harnage, thereby depriving said Harnage of the right, title, privilege or immunity asserted by him in pursuance of the Acts of Congress aforesaid.

Fifth. The Supreme Court of Oklahoma committed error 703 in denying to the Plaintiffs in Error the relief prayed for by them in their Bill, or Petition, filed herein.

Wherefore, the Plaintiffs in Error pray that the judgment and decision aforesaid may be reversed, annulled and altogether held for naught and that they may be restored to all things which they have lost by the action and because of said judgment and decision.

JAMES A. VEASEY,
L. A. ROWLAND,
*Attorneys and Counsellors for
Plaintiffs in Error.*

704 Filed Mar. 9, 1915. William M. Franklin, Clerk

In the Supreme Court of the United States of America.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS AND OIL COMPANY, a Corporation, Plaintiffs in Error,
vs.

ANNIE M. MARTIN and ROTH, ARGUE & MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

Order Allowing Writ of Error.

The above entitled matter coming on to be heard upon petition of the Plaintiffs in Error for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a Writ of Error be, and is hereby, allowed to this Court from the Supreme Court of the United States, and that

the bond presented by said petitioner be, and the same hereby is approved.

[SEAL.]

M. J. KANE,
*Chief Justice of the Supreme Court
 of the State of Oklahoma.*

Attest:

WM. M. FRANKLIN,
Clerk Supreme Court, State of Oklahoma.

705 Filed Mar. 9, 1915. William M. Franklin, Clerk.

In the Supreme Court of the United States of America.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, a Corporation,
 Plaintiffs in Error,

VS.

ANNIE M. MARTIN and ROTH, ARGUE & MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

Writ of Error from the Supreme Court of the United States to State Court.

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greetings:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Supreme Court of the State of Oklahoma, before you, or some of you, being the highest court at law or equity of the said state in which a decision could be had in the said suit between Jesse L. Harnage and Delokee Gas & Oil Company, a corporation, Plaintiffs in Error, and Annie M. Martin and Roth, Argue & Maire Brothers Oil Company, a corporation, Defendants in Error wherein was drawn in question the construction of a statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up or

706 claimed under such clause of the said statute, a manifest error hath happened, to the great damage of the said Jesse L. Harnage and Delokee Gas & Oil Company, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 8 day of April, 1915, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein, to correct that

error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Edward Douglass White, Chief Justice of the said Supreme Court, the 9 day of March, 1915 A. D.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
*Clerk United States Court, Western
District of Oklahoma.*

Allowed by

M. J. KANE,

Chief Justice Supreme Court of Oklahoma.

707 Filed Mar. 9, 1915. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 4284.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, a Corporation,
Plaintiffs in Error,

vs.

ANNIE M. MARTIN and ROTH-ARGUE-MAIRE BROTHERS OIL COMPANY, a Corporation, Defendants in Error.

Bond.

Know all men by these presents: That Jesse L. Harnage and Delokee Gas & Oil Company, a corporation, Plaintiffs in Error, principal obligors, and National Surety Company of New York, as surety are held and firmly bound unto Annie M. Martin and Roth-Argue-Maire Brothers Oil Company, a corporation, in the penal sum of One Thousand Dollars (\$1,000.00) for the payment of which well and truly to be made, we, and each of us, do hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Dated this 9th day of December, 1914.

Whereas, said obligees did on the 28th day of October, 1913, in the above entitled cause, procure a judgment against the principal obligors affirming a previous decision of the District Court
708 of Washington County, Oklahoma, denying the right of said principal obligors to have a trust declared in their favor against the obligees in the real estate involved in said proceedings, which judgment denied the principal obligors the relief sought by them on their petition in said cause, and

Whereas, the said principal obligors have secured a writ of error to the Supreme Court of the United States to review the proceedings in said cause,

Now, Therefore, if the said principal obligors shall prosecute their Writ of Error to effect and pay all costs if they fail to make their

plea good, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof we have hereunto set our hands and our respective seals, this 14th day of December, 1914.

JESSE L. HARNAGE,
By JAS. A. VEASEY, *Attorney.*
THE DELOKEE GAS & OIL COMPANY,
By A. F. JACKSON,
Vice-President, Principal Obligors.

Attest:

[SEAL.] LESLIE COOMBS, *Secretary.*

NATIONAL SURETY COMPANY,
By N. B. MAXEY, *Resident Vice-President, Surety.*

Attest:

[SEAL.] H. S. SHELOR,
Resident Asst Secretary.

Approved this 9th day of March, 1915.

M. J. KANE,
Chief Justice.

709 In the Supreme Court of the State of Oklahoma.

Certificate.

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 708 pages, numbered from 1 to 708, both inclusive, are a full, true and complete transcript of the record and all proceedings in said Supreme Court in the case No. 4284, Jesse L. Harnage and Delokee Gas & Oil Company, Plaintiffs in error, vs. Annie M. Martin and Roth-Argue-Maire Brothers Oil Company, a corporation, Defendants in error, as the same remain on file and of record in my office.

In witness whereof, I hereto set my hand and affix the seal of said Court, at Oklahoma City, Oklahoma, this 31st day of March, 1915.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of the State of Oklahoma.

Endorsed on cover: File No. 24,675. Oklahoma Supreme Court. Term No. 112. Jesse L. Harnage and The Delokee Gas & Oil Company, plaintiffs in error, vs. Annie M. Martin and Roth, Argue and Maire Brothers Oil Company. Filed April 19th, 1915. File No. 24,675.

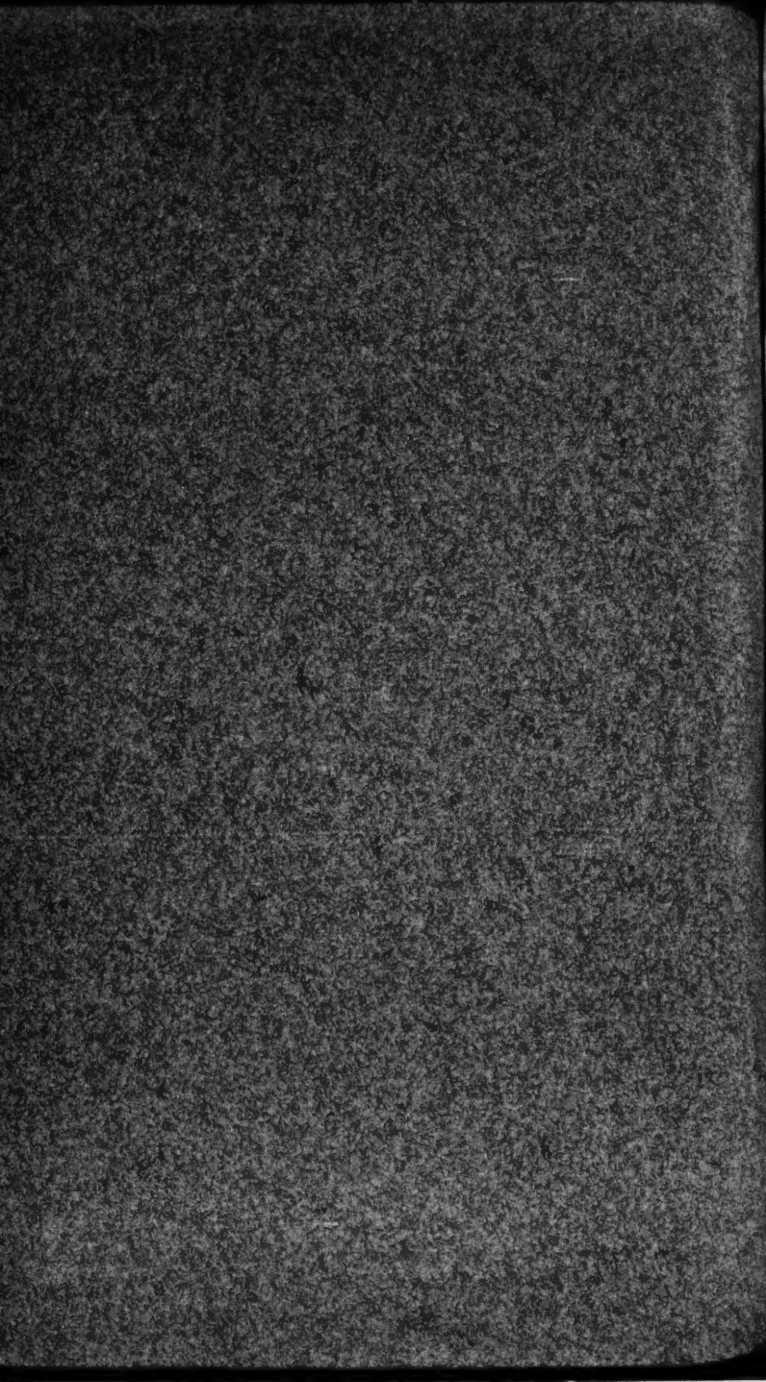
Supreme Court of the United States
October Term, 1971

James A. McKeown, Jr., Petitioner,
vs.
James A. McKeown, Jr., Respondent.

James A. McKeown, Jr., Petitioner,
vs.
James A. McKeown, Jr., Respondent.

Motion for an Order to Show Cause why
James A. McKeown, Jr. should not be
deprived of his liberty.

W. J. McKeown, Jr., Attorney
for James A. McKeown, Jr.,
Respondent.



In the
Supreme Court of the United States
OCTOBER TERM, 1916..

No. 112.

**JESSE L. HARNAGE and DELOKEE OIL & GAS COM-
PANY, - - - - Plaintiffs in Error**

v.

**ANNIE M. MARTIN and ROTH-ARGUE-MAIRE BROTH-
ERS OIL COMPANY, - - - Defendants in Error**

**Motion for an Order to Dismiss or Affirm This
Cause and in Case of a Denial Thereof,
That the Cause Be Advanced to
the Summary Docket.**

Now comes Annie M. Martin and the Roth-Argue
Maire Brothers Oil Company, the defendants in

error, by W. L. MacKenzie and Robert J. Boone, their attorneys, and move this Court to dismiss the writ of error issued upon the petition of Jesse L. Harnage and the Delokee Oil & Gas Company, the above named plaintiffs in error, to the Supreme Court of Oklahoma upon a final judgment entered in said Supreme Court of the State of Oklahoma in favor of the defendants in error and against said plaintiffs in error; and in default of dismissing said writ of error, that then in that event, this Court affirm the judgment of the said Supreme Court of Oklahoma; and for cause and grounds of this motion to dismiss or affirm, the defendants in error say:

I.

That this Honorable Court is without jurisdiction to review on writ of error the said judgment of the Supreme Court of the State of Oklahoma for the reasons:

(a) That the Supreme Court of Oklahoma was without jurisdiction to grant the writ of error or to transmit or cause to be transmitted the record herein, it having lost jurisdiction of the parties and subject matter when the mandate of the said Supreme Court of the State of Oklahoma was issued to the District Court of Washington County, Oklahoma, and filed in said Court on the 26th day of December, 1913.

(b) That there is no Federal question involved herein.

II.

In the event that this Honorable Court should refuse to grant the foregoing motion to dismiss said writ of error and should maintain jurisdiction upon the same, then mover prays that said judgment of the Supreme Court of Oklahoma be affirmed, as it is manifest that said writ of error was taken by plaintiffs in error for delay only, and that the questions upon which the decision of said cause depend are so frivolous as not to need further argument.

III.

In the event that this Honorable Court should refuse to grant the foregoing motion to dismiss or affirm, then mover prays that the order of supersedeas be vacated and this cause be transferred for hearing to the summary docket. Mover avers that notice of intention to present this motion was given to, and a copy of brief filed in support of same, was served upon the plaintiffs in error, and that proof thereof accompanies this motion.

WHEREFORE, Mover prays that said writ of error taken by Jesse L. Harnage and the Delokee Oil & Gas Company be dismissed and in the alternative that the judgment of the Supreme Court of Oklahoma be affirmed, and in the event of the denial of

said motion, that the order of supersedeas be vacated and that this cause be transferred for hearing to the summary docket. And mover shall ever pray.

W. L. MacKENZIE,
ROBERT J. BOONE,
Attorneys for Defendants in Error.

IN THE SUPREME COURT OF THE
UNITED STATES.

OCTOBER TERM, 1916.

*Jesse L. Harnage and Delokee Oil & Gas Company,
Plaintiffs in Error v. Annie M. Martin and Roth-
Argue-Maire Brothers Oil Company, Defend-
ants in Error.*

No. 112.

NOTICE OF MOTION.

To James A. Veasey, L. A. Rowland and J. P.
O'Meara, attorneys for the above named plain-
tiffs in error, Tulsa, Oklahoma;

Please take notice that the foregoing and at-
tached motion will be presented to the said Honor-
able Supreme Court of the United States at Wash-
ington, D. C., on Monday, the 9th day of October,
A. D. 1916.

W. L. MACKENZIE,

ROBERT J. BOONE,

Attorneys, for Defendants in Error.
Tulsa, Oklahoma.

Due service is hereby admitted at Tulsa, Okla-
homa this the-----day of September, 1916, of the
foregoing notice of motion, motion and brief at-
tached thereto.

Attorneys for Plaintiffs in Error

**IN THE SUPREME COURT OF THE
UNITED STATES.**

OCTOBER TERM, 1916.

*Jesse L. Harnage and Delokee Oil & Gas Company,
Plaintiffs in Error v. Annie M. Martin and Roth-
Argue-Maire Brothers Oil Company, Defend-
ants in Error.*

No. 112.

BRIEF OF DEFENDANT IN ERROR.

The question set out by paragraph (a) of the first ground of the motion relates solely to the question of whether or not this Court can acquire jurisdiction upon a writ of error issued and allowed by the Supreme Court of the State of Oklahoma after said Supreme Court of Oklahoma has transmitted its mandate and the same has been filed in the trial court. There is offered in evidence in support of this ground of the motion a certified copy of the mandate with its endorsement from the District Court of Washington County, Oklahoma. The judgment was rendered by the Supreme Court of Oklahoma on the 28th of October, 1913, and the mandate was filed in the District Court in Washington County on the 26th day of December, 1913. The petition of plaintiffs in error for a writ of error upon said judgment was filed in this Court on April 19, 1915, a period of more than sixty days, excluding Sundays, after the rendition of the judgment.

Rules Number 10 and 11 of the Supreme Court of Oklahoma provide as follows:

“X. REHEARING: STAY OF MANDATE. After the expiration of fifteen days from the filing of an opinion, the clerk shall issue a mandate to the court in which the judgment was rendered, in accordance with the decision of this Court, and no petition for rehearing shall stay such mandate unless the person applying for rehearing shall present such petition to and obtain from one of the justices who concurred in the opinion a stay of such mandate until said petition for rehearing shall be heard. The justice to whom such petition is presented shall examine the same, and if in his opinion a rehearing will probably be granted, he may take an order staying such mandate.

In any case in which a petition for rehearing is denied or in which an opinion is rendered on rehearing, no further motions or applications for rehearing or review will be allowed, and the clerk shall not file any such motions or applications, except by leave of court first obtained.”

“XI. PROCEDURE UPON AFFIRMATION: Upon the affirming of a judgment, execution may issue, at the option of the party, from this court; or, if such party elects, a writ of procedure shall be issued to the court below upon the payment by the successful party of the costs incurred in this court.”

It will, therefore, be noted from the above rules that after the expiration of fifteen days from the

filing of an opinion in a cause the clerk of the State Supreme Court is required to issue his mandate to the lower court to proceed in accordance with the opinion and decision of the Court. The Supreme Court of Oklahoma in construing its right to recall its mandate or to exercise jurisdiction over a case after the mandate has been transmitted to the trial court and spread of record, in the case of *Thomas v. Thomas*, 113 Pac. Rep. 1058, says:

“Where, after a decision of a case, and rendition of an opinion in this Court, its mandate is regularly transmitted to the trial court, and is spread of record upon its records, this Court, in the absence of fraud, accident, inadvertance or mistake, is without jurisdiction to recall the mandate and entertain a petition for rehearing, and a motion for leave to file the same will be denied.”

This Court in the case of *Polleys v. Black River Improvement Company*, 113 U. S. 81, 28 Law Ed. 938, held that—

“* * * where on an appeal, the Supreme Court of a state reversed a judgment of an inferior court and remanded the cause to that court, with directions to enter judgment, the writ of error from this court was properly directed to the inferior state court to bring the record here for review.”

We, therefore, contend that the writ of error

in this case should have been directed to the District Court in Washington County, Oklahoma, and that although the Supreme Court attempted to transmit a record, such purported record would not give this court jurisdiction.

Under subdivision (b), that there was no Federal question involved in the trial in the lower court, we call attention to the opinion of the court below, which is printed in full as an appendix to this brief.

At the time of the preparation of this motion, the record in this case has not been printed, and therefore we are unable to refer to the same, or to know what the assignments of error in the petition of the plaintiffs in error for its writ of error, but we assume that the petition probably alleges such assignments as might constitute a Federal question, but an examination of the opinion of the court below, and also an examination of the opinion of the court below, and also an examination of the record itself will show, as we take it, conclusively that there was no Federal question involved. The case was decided solely upon the question of the sufficiency of plaintiffs' in error evidence, because the District Court sustained defendants' demurrer to the evidence. Quoting from the body of the opinion of the court below:

"After a careful review of the evidence before the Secretary of the Interior, we are

of the opinion that it is sufficient to establish that defendant had such an interest in the improvements upon the land in controversy as entitled her, under the provisions of the statute above referred to, to select these lands as her allotment. Plaintiff does not claim that he ever acquired this right from her, or that she ever conveyed it to others.

Other questions are presented by this appeal; but, since our views upon this one question requires an affirmance of the judgment of the lower court, it is unnecessary to consider them."

As will be noted, there was only one question tried and determined by the trial court, and that was the *sufficiency of the evidence* to sustain the plaintiffs' case; the same question again arose in the Supreme Court of Oklahoma, and that Court upheld the decision of the trial court, and its decision no where involved any Federal question, but related solely to the sufficiency of the evidence before the Court to sustain the plaintiffs' cause of action.

It is fundamental that the Federal question must be real, not fictitious; that is, there must be some ground for the averment of the question.

Hamblin v. Western Land Company, 147
U. S. 531, 37 Law Ed. 267.

In the early case of *Murdock v. Memphis*, 20

Wallace 635, 22 Law Ed. 429, Justice MILLER says in the opinion:

First: "That it is essential to the jurisdiction of this court over the judgment of a state court, that it shall appear that one of the questions mentioned in the Act must have been raised and presented to the state court.

Second: That it must have been decided by the state court, or that its decision was necessary to the judgment or decree, rendered in the case.

Third: That the decision must have been against the right claimed or asserted by the plaintiff in error under the Constitution, treaties, laws or authority of the United States.

Fourth: If it finds that it was rightly decided, the judgment must be affirmed.

Fifth: If it was erroneously decided against a plaintiff in error, then this court must further inquire whether there is any other matter or issue adjudged by the state court which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the Federal question. If this is found to be the case, the judgment must be affirmed inquiring into the soundness of the decisions on such other matters or issue."

It will be further noted that it is only in cases where the state court's decisions were adverse to the power exercised by the United States that a

review by this court is provided for in the Act; in the case at bar, the decisions have not been adverse to the power exercised by the United States, but from an examination of the record it will be found that the defendants in error have been sustained by every decision from that of the Superintendent of the Five Civilized Tribes to the Commissioner of Indian Affairs and also the decision of the Honorable Secretary of the Interior, awarding the patent to the lands in controversy to the defendant in error, Annie M. Martin; in other words, each decision of each of the various officers of the Interior Department handling the Indian affairs have at all times been in favor of Annie M. Martin. We contend that this court has nothing to do with the facts—that is all there is in dispute, as I view it.

It seems to be elementary:

“That questions of fact cannot be reviewed by the Supreme Court, but must be taken as found.”

Hedrick v. Atchison, etc., R. Co. 167
U. S. 673, 42 Law Ed. 320.

Montgomery's Manual of Federal Procedure, page 215.

There being only a question of fact that was tried and determined in the courts below, we do not see how it is possible for counsel by any ingenuity to construe the decisions of the lower court

as being a decision wherein a Federal question was necessarily involved; besides that, the rule is that the questions must be raised in the state court; some of the authorities say:

“The proper time to present the question is in the trial court, whenever that is required by state practice in accordance with which the highest court will not revise the judgment of the court below on questions not therein raised. And if it is not presented before decision by the court of last resort, in the state, it then becomes too late to present it. It is not sufficient, therefore, to make the claim for the first time in the petition for writ of error.”

Montgomery's Manual Federal Procedure, pages 211 to 212.

It seems so manifest from the question determined by the decisions of the court that the writ of error in this cause was taken by the plaintiffs in error for delay only, and that the question upon which such decisions of said cause depend, are so frivolous as not to need further argument.

We, therefore, respectfully submit and request that the writ of error be dismissed and if not that, then that the judgment must be affirmed, and failing therein, we move that the supersedeas be vacated and the cause be advanced to the summary docket for an early hearing.

W. L. MacKENZIE, Lima, Ohio,
ROBERT J. BOONE, Tulsa, Oklahoma.
Attorneys for Defendants in Error.

APPENDIX.

(Filed Oct. 28, 1913.)

40 Okla. 341, 136 Pac. 154.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

Jesse L Harnage and Delokee Gas & Oil Company. Plaintiffs in Error, vs. Annie M. Martin and the Roth-Argue-Maire Brothers Oil Co., Defendants in Error.

No. 4284.

SYLLABUS.

1. Courts of equity have jurisdiction, after the Commission to the Five Civilized Tribes and the Secretary of the Interior have exercised their powers and exhausted their jurisdiction, to determine whether by error of law, or through fraud or gross mistake of fact, the Commission or the Secretary has failed to allot land in the Cherokee Nation to the citizen, who, under the law and the treaties, was entitled to the same.

2. Whether or not there was any evidence to sustain a finding of fact made in a contest before the Commission and the Secretary of the Interior, involving the rights of two different Indians to select certain lands, is a question of law; and an error in that respect which results in the issuance of a patent to the wrong party may be remedied by a proceeding in equity.

3. The evidence reviewed and held sufficient to sustain the finding of fact made by the Secretary of the Interior and the Commission in a contest before them.

ERROR FROM THE DISTRICT COURT OF WASHINGTON COUNTY.

R. H. Hudson, Trial Judge.

AFFIRMED.

Veasey, O'Meara & Owen, Attorneys for Plaintiffs in Error.
Robert J. Boone, Attorney for Defendants in Error.

OPINION OF THE COURT BY HAYES, C. J.

This is an appeal from a judgment of the District Court of Washington County, sustaining a demurrer to the evidence of the plaintiffs in error, plaintiffs below, and dismissing their petition and rendering a judgment against them in favor of defendants in error, defendants below.

Plaintiff, Harnage, and defendant, Martin, are duly enrolled members of the Cherokee Tribe of Indians, and this suit was brought by Harnage in the court below to charge the lands in controversy with a trust in his favor for the alleged reason that in a contest case before the Department of the Interior, involving the right to select said lands as an allotment, the Secretary of the Interior committed errors of fact and law, by reason whereof he awarded the lands in controversy to defendant Martin as a portion of the allotment to which she was entitled as a member of said tribe of Indians; when, under the facts established and the law applicable thereto, plaintiff contends such lands should have been awarded to him. Plaintiff, Delokee Gas & Oil Company, claims interest in said land by

virtue of an oil and gas lease from its co-plaintiff, Harnage. Defendant, Roth-Argue-Maire Brothers Oil Company claims a like interest under a similar lease from defendant Martin. It is therefore unnecessary to make further reference to the interests of these two companies in the consideration of the case.

Plaintiff made a part of his petition and introduced at the trial all the records in a contest case, which was instituted and tried before the Department of the Interior for the purpose of determining whether he or defendant was entitled to select the land in controversy as an allotment. On the 13th day of May, 1904, plaintiff made application to the Commission to the Five Civilized Tribes to have allotted to him the land in controversy, and such application was granted. Thereafter, on the 26th day of May, 1904, defendant made a similar application to the Commission to the Five Civilized Tribes which was refused; whereupon, on the same day she instituted a contest proceeding before the Commission to the Five Civilized Tribes against the allotment theretofore made to defendant. The trial before the Commission to the Five Civilized Tribes resulted in a decision in favor of defendant in this case, plaintiff in the contest. From this decision an appeal was taken to the Commissioner of Indian Affairs, where a like decision and judgment was rendered, which, on appeal to the Secretary of the Interior, was affirmed. The trial court had before it the entire record and all the evidence upon which the decisions of the Commission to the Five Civilized Tribes and the Commissioner of Indian Affairs and the Secretary of the Interior were rendered; and in addition thereto, certain addition evidence in the form of depositions, which need not be noticed here.

Plaintiff urges that the action of the trial court in sustaining a demurrer to his evidence was erroneous, upon three different grounds, and for such reason should be reversed. Under the view we take of the case, it will be necessary to consider only the first proposition advanced by plaintiff, which is that since plaintiff made the first selection of the land in controversy as a part of his allotment and such fact appears without dispute in the record before the Secretary of the Interior and in the evidence before the trial court, and that there being no evidence whatever to the effect that at the time of the prior selection by plaintiff defendant was the owner of the improvements of the land in controversy, the court erred in not finding the issues for plaintiff. There is no contention that the decision of the Department of the Interior was fraudulently rendered, or that any fraud was exercised by defendant in procuring it. The power of the courts where the Department of the Interior has awarded to a member of the Five Civilized Tribes certain land as his allotment and patent therefor has been issued to him, to determine the rights of a contestant to such land was decided in *Garrett v. Walcott*, 25 Okla. 574, wherein, it was held that the jurisdiction of the Commissioner of Indian Affairs and of the Secretary of the Interior and the effect of their action on the allotment of the lands of such Indians are the same in effect as the jurisdiction and effect of the Land Department of the United States in the disposition of the public lands within its control. The

is accurately stated in *Howe v. Parker* (C. C. A.), 190 Fed. 738, in the following language:

"The Land Department of the United States is a quasi judicial tribunal, invested with the authority to hear and determine claims to the public lands subject to its disposition and its decisions of the issues presented at such hearings are impervious to collateral attack. But its judgments and patents do not conclude the rights of claimants to the land. They rest on established principles of law and fixed rules of procedure, the application of which to each case conditions its right decision, and if the officers of the Land Department are induced to issue a patent to the wrong party by an erroneous view of the law or by a gross mistake of the facts proved, or by a decision induced by fraud, the rightful claimant is not remediless. He may in a court of equity avoid the effect of the decision and the patent and charge the legal title derived from it with a trust in his favor."

By section 11 of an act of Congress, approved July 1, 1902, (32 U. S. Stat. at L. p. 716), it is provided that there shall be allotted by the Commission of the Five Civilized Tribes to each enrolled member of the tribe lands equal in value to 110 acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which lands may be selected by each allottee so as to include his improvements. By section 18 of the same act it is made unlawful after 90 days after the ratification of the act for the member of the tribe to enclose or hold in his possession more land in value than 110 acres of the average allottable lands of the Cherokee Nation, either for himself or his wife, or for each of his minor children. These provisions of the act clearly contemplate that any member of the tribe shall have a right to select as his allotment lands upon which he owns the improvements, and that his wife and minor children shall have the right to select as their allotments lands upon which he owns the improvements; and that after 90 days after the ratification of the act, the fact that an Indian has theretofore owned the improvements and held possession of lands in acreage in excess of what he is entitled to take as allotment for himself, his wife and his minor children shall not preclude others from taking such lands as their allotment, because it is made unlawful for a member of the tribe, although he owns the improvements, to hold the lands, unless needed as allotment for himself, or his wife and minor children.

Plaintiff in the instant case filed first upon the lands in controversy. Defendant was entitled to prevail in the contest, only by showing that she had some preference right to select the lands in controversy as a portion of her allotment; that she was the owner of the improvements and entitled to the benefits of the provisions of section 11, securing her the right to select the lands whereon she owned the improvements as her allotment. It is the contention of plaintiff that there was not any evidence before the Department to establish this fact. Defendant's first contention is, that in the absence of fraud, the courts can not inquire as to whether there was any evidence to sup-

port the finding of fact of the Department upon which the contest case was determined. This contention, we think, is settled by decisions of this court, as well as by the decisions of the Federal courts. In *Jordan v Smith*, 12 Okla. 703, it is said:

"So far as the courts are concerned the findings of fact by the land department in a contest proceeding are as conclusive and binding upon the courts as a verdict of a jury in their own tribunal, and the only inquiry the court can make is, was there any evidence on which to base the finding?"

See also, *Paine v. Foster*, 9 Okla. 213.

In *Howe v. Parker*, supra, Judge Sanborn, who delivered the opinion for the court, said:

"Whether or not the weight of evidence in substantial conflict sustains the one or the other side of an issue of fact is a question upon which, in cases within his jurisdiction, the final decision of the Secretary of the Interior is conclusive in the absence of fraud or gross mistake. But whether or not there is at the close of a final trial or hearing before him any evidence to sustain a charge or a finding of fact in support of it, is in his and in every judicial and quasi judicial tribunal, a question of law."

In support of this statement of the law numerous authorities are cited. If the Secretary of the Interior in rendering his decision assumed a fact established which was necessary to the rights of the Prevailing party, but which there was wanting any evidence to support, the error committed by him was one of law, and plaintiff may have it reviewed by a court of equity in a proceeding brought to avoid the effect of the decision of the Secretary of the Interior.

The facts found in the contest case by the Commission to the Five Civilized Tribes, by the Commissioner of Indian Affairs and by the Secretary of the Interior, although not stated by these respective officers in the same language, are substantially the same. The land in controversy constitutes part of a large tract known as the Thursday place and was held at the time of the institution of the contest case and had been for several years prior thereto by a family of which Mary Thursday, the grandmother of defendant, is the Indian head. The southern portion of the said place was held and occupied by this family for several years prior to 1893. Whether this portion of the place was originally acquired by the family through purchase or original segregation, the evidence is not clear. In 1893, Mary Thursday purchased the improvements upon the northern part of said place, which embraces the land in controversy. She paid therefor the sum of \$800, which payment she made out of funds received by her as payments to her as a member of the Indian tribe, and to her grandson, Samuel Bob, the brother of defendant; and a bill of sale was executed by Mary Thursday and said Samuel Bob for said improvements. Both of defendant's parents died prior to 1890. Before their death, for a number of years, she and her parents resided with her grandmother, Mary Thursday. Subsequent to her parent's death, she continued to reside for a time with her grandmother. Samuel Bob,

defendant's brother, continued to reside at the same place until he became of age. Within a year or two after the death of her parents, defendant was stolen from her home with her grandmother by a man by the name of Frenchman, by whom she was kept and with whom she resided until she went away to school. In 1898, when she was about 18 years old, she married George Martin, her present husband, with whom she has since resided. Defendant's grandmother, during the time she lived with her, collected defendant's payments from the government to which defendant was entitled as a member of the Indian tribe, and which the grandmother collected as the Indian head of the family, of which defendant was then a member. During the foregoing mentioned time, one Wallace Thursday, the step-grandfather of defendant, resided at the home of Mary Thursday. In 1899, about a year after defendant's marriage, while she and her husband were visiting at the Thursday home, her grandmother told her that she need not look elsewhere for lands to allot; that there was sufficient in the home place for her; and that she could select her allotment out of the lands in that place; that the family would remain in possession of the same until time to make the allotment, but that there were sufficient lands there for the grandmother and defendant's brother, Samuel Bob, who had theretofore been a member of the family, and the defendant, and gave her the right to select her allotment out of said place.

The evidence establishes that conversations to the foregoing effect were had between the defendant, her husband, and the grandmother, or with the step-grandfather at different times. Prior to the time defendant filed her contest, Mary Thursday had selected her allotment in the southern part of the home place, and Samuel Bob had selected his in the northern part, and the land lying between these two allotments was left for defendant, which, when she made application to allot, she found to have already been allotted to plaintiff; and she thereupon instituted her contest. The evidence is conflicting relative to some of the facts stated above, but with the substantial conflict in the evidence, this court has nothing to do. It is true that the evidence does not disclose that there was ever any formal conveyance of the improvements upon the identical land in controversy made by Mary Thursday to defendant; but it is clear from the evidence that Mary Thursday intended, in consideration of the fact that she had collected and expended in establishing and maintaining the home, moneys to which defendant was entitled and received as a member of the Indian tribe, and out of affection and love she bore for the daughter of her deceased son, to provide for her an allotment, and that she gave to defendant the right to take her allotment out of said lands; and in giving her such right, gave her every interest therein necessary to effectuate the allotment, which included the improvements thereon. There was no law that required that such gifts or conveyances or improvements upon lands of the tribe held by an individual Indian before allotment should be made by written contract or conveyance. After a careful review of the evidence before the Secretary of the Interior, we are of the opinion that it is sufficient to establish that defendant had such an interest in the improvements upon the land in controversy as entitled her, under the provisions of the statute above referred

to, to select these lands as her allotment. Plaintiff does not claim that he ever acquired this right from her, or that she ever conveyed it to others.

Other questions are presented by this appeal; but, since our view upon this one question requires an affirmance of the judgment of the lower court, it is unnecessary to consider them.

The judgment of the trial court is affirmed.

All the Justices concur.

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JAMES D. N

No. 112.

In the
Supreme Court of the United States.
October Term, 1916.

**JESSE L. HARNAGE and DELOKEE OIL & GAS
COMPANY, - - - - - Plaintiffs in Error,**

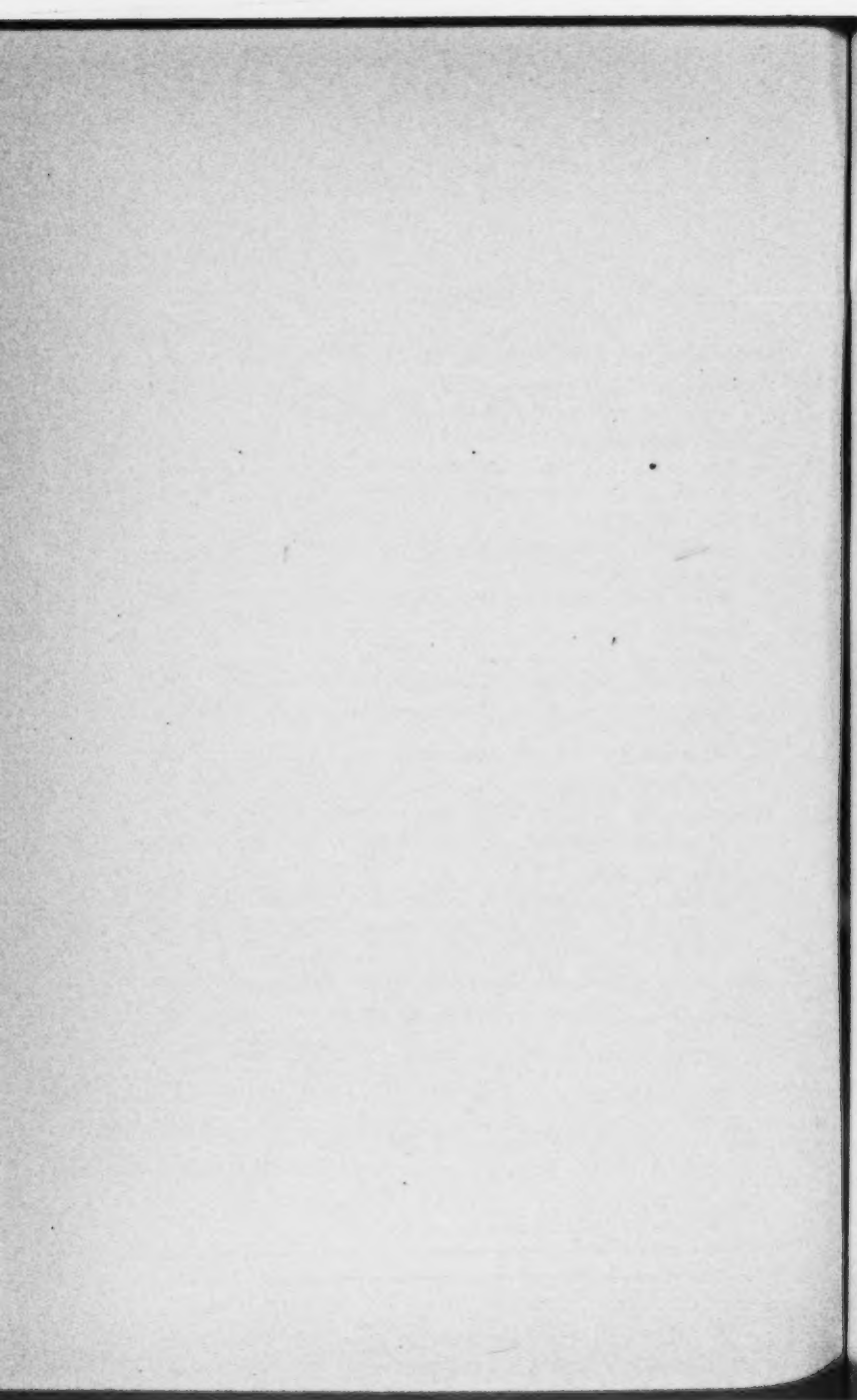
VERSUS

**ANNIE M. MARTIN and ROTH-ARGUE-MAIRE
BROTHERS OIL COMPANY, Defendants in Error**

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.**

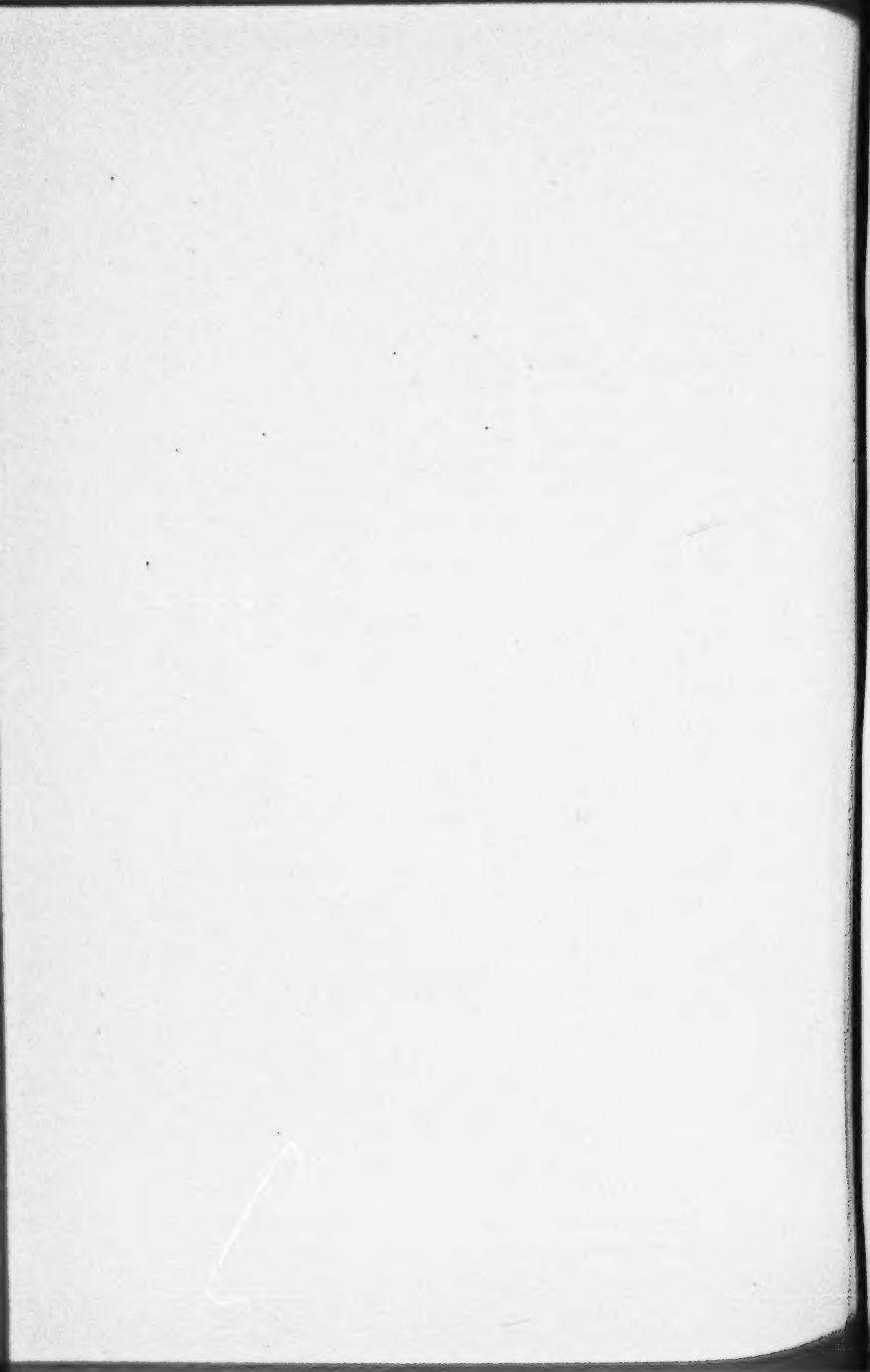
**REPLY BRIEF OF PLAINTIFFS IN ERROR ON
MOTION OF DEFENDANTS IN ERROR
TO DISMISS OR AFFIRM.**

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In the
SUPREME COURT OF THE UNITED STATES.
October Term, 1916.

No. 112.

**JESSE L. HARNAGE and DELOKEE OIL & GAS
COMPANY, - - - - - Plaintiffs in Error,**

vs.

**ANNIE M. MARTIN and ROTH-ARGUE-MAIRE
BROTHERS OIL COMPANY, Defendants in Error**

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.**

**REPLY BRIEF OF PLAINTIFFS IN ERROR ON
MOTION OF DEFENDANTS IN ERROR
TO DISMISS OR AFFIRM.**

For the purposes of this brief, the plaintiffs in error will content themselves in answering or replying to the propositions or grounds presented by the motion of the defendants in error to dismiss or affirm, answering or replying to such propositions or

grounds in the same order in which they are presented by the brief of the defendants in error filed in support of such motion.

Subdivision "a" of the first paragraph of the motion to dismiss, while presented as a ground or reason why this court does not have jurisdiction to review on writ of error the judgment complained of in this cause, does not, as the motion itself discloses, go to the jurisdiction of this court, but merely sets up the fact that the Supreme Court of Oklahoma was without jurisdiction to grant the writ of error or to transmit or cause to be transmitted the record in this cause, for the reason that it had lost jurisdiction of the parties and the subject matter when the mandate of the said Supreme Court of the State of Oklahoma was issued to the District Court of Washington County, Oklahoma. The pleader evidently erroneously treating or attempting to show that a writ of error operates upon the parties and subject matter of the litigation.

Realizing, as we do, that this court will take judicial notice of the laws of this and other states, and while, no doubt, this court is familiar with the appellate procedure in vogue in this state, yet for the purpose of exhibiting unto this court the efforts of the defendants in error to have this cause disposed of, without the plaintiffs in error having a fair

opportunity to make full presentation to this honorable court of the matters involved, and for the purpose of compiling, in convenient form, the only laws of the State of Oklahoma relating to the method of perfecting an appeal in cases of this nature, we quote from such laws as follows :

Section 5236 of the Revised Laws of Oklahoma, 1910, as to the jurisdiction of the Supreme Court, is as follows :

“ 5236. *Jurisdiction of Supreme Court.*—The Supreme Court may reverse, vacate or modify judgments of the county, superior or district court, for errors appearing on the record, and in the reversal of such judgment or order, may reverse, vacate or modify any intermediate order involving the merits of the action, or any portion thereof. The Supreme Court may also reverse, vacate or modify any of the following orders of the county, superior or district court, or a judge thereof :

“ *First.* A final order.

“ *Second.* An order that grants or refuses a continuance ; discharges, vacates or modifies a provisional remedy ; or grants, refuses, vacates or modifies an injunction ; that grants or refuses a new trial ; or confirms or refuses to confirm, the report of a referee ; or sustains or overrules a demurrer.

“ *Third.* An order that involves the merits of an action, or some part thereof.”

Section 5238 of the Revised Laws of Oklahoma, 1910, provides the method of appealing a cause in order to obtain a review, reversal or modification of the judgment of the lower court, and is as follows :

“ 5238. *Petition in Error.*—The proceedings to obtain such reversal, vacation or modification, shall be by petition in error, filed in the supreme court, setting forth the errors complained of; and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record, in the original case, shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation, ten days before the commencement of the term. If issued in term time, or within ten days of the first day of the term, it shall be returnable on a day therein named. If the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at that term.”

Section 5240 of the Revised Laws of Oklahoma, 1910, provides for the production of the record in the Supreme Court, and is as follows :

“ 5240. *Case-made Attached—Costs.*—In all actions hereafter instituted by petition in error in the supreme or other appellate court the plain-

tiff in error shall attach to and file with the petition in error the original case-made, filed in the court below, or a certified transcript of the record of said court; and in no such action hereafter instituted in the supreme court shall any charge, fees or costs be taxed or allowed for making any copy of any case-made, or transcript, when such copy shall be ordered by the court for its use, and the same has not been furnished by the plaintiff in error thirty days before the first day of the term at which the case shall stand for hearing, and no costs or fees shall be taxed for making a complete record in such case, except when the same shall be made by request of a party to the suit and at his own costs."

Section 5241 of the Revised Laws of Oklahoma, 1910, provides what the case-made or record shall contain, and is as follows:

" 5241. *Case-made to Contain What.*—A party desiring to have any judgment or order of the county, superior or district court, or a judge thereof, reversed by the supreme court, may make a case, containing a statement of so much of the proceedings and evidence, or other matters in the action, as may be necessary to present the errors complained of to the supreme court."

Section 5258 of the Revised Laws of Oklahoma, 1910, provides for the issuance of the mandate by the appellate court, and is as follows:

“ 5258. *Mandate to Issue to Lower Court.*— When a judgment or final order shall be reversed on appeal, either in whole or in part, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment. The court reversing such judgment or final order shall not issue execution in causes that are removed before them on error, on which they pronounce judgment as aforesaid, but shall send a special mandate to the court below as the case may require, to award execution thereupon; and such court, to which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment or final order had been rendered therein. In cases decided by the supreme court, when the facts are agreed to by the parties, or found by the court below, or a referee, and when it does not appear, by exception or otherwise, that such findings are against the weight of the evidence in the case, the supreme court shall send a mandate to the court below, directing it to render such judgment in the premises as it should have rendered on the facts agreed to or found in the case.”

Section 5259 of the Revised Laws of Oklahoma, 1910, provides for the filing of the opinion in the case, and makes same a part of the record, and is as follows:

“ 5259. *Opinion to Be Filed With the Case.*—

It shall be the duty of the justices of the supreme court to prepare, and file with the papers in each case, full notes of the opinion of the court upon the questions of law arising in the case, within sixty days after the decision of the same; and the opinion so filed shall be treated as a part of the record in the case, but no costs shall be charged therefor, except for copies thereof ordered by a party; and no mandate shall be sent to the court below, until the opinion provided for by this section has been filed."

Section 5260 of the Revised Laws of Oklahoma, 1910, providing for the sending of a syllabus of the points of law decided in the case by the Supreme Court, together with the mandate to the lower court, is as follows:

" 5260. *Syllabus*.—A syllabus of the points of law decided in any case in the supreme court shall be stated, in writing, by the justice delivering the opinion of the court, and filed with the papers of the case, which shall be confined to points of law arising from the facts in the case, that have been determined by the court; and the syllabus shall be submitted to the justices concurring therein, for revision before filing thereof, and it shall be filed with the papers, without alteration, unless by consent of the justices concurring therein; and a copy if such syllabus shall, in all cases, be sent to the court below, by the clerk of the supreme court, with the mandate provided for by section 5258."

Section 5263 of the Revised Laws of Oklahoma, 1910, abolishing writs of error, and other methods of appeal, is as follows :

“ 5263. *Writs of Error Abolished.*—Writs of error and *certiorari*, to reverse, vacate or modify judgments or final orders, in civil cases, are abolished ; but court shall have the same power to compel complete and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and *certiorari*.”

Therefore, we respectfully submit that at all times, after an appeal has been perfected from the lower to the Supreme Court of Oklahoma, the record or transcript is retained in the Supreme Court, and is the foundation of the proceedings there, and the practice in this state, as outlined by the provisions of the laws herein quoted, does not permit the transmission of the records from the Supreme Court to the inferior courts.

This court, in the case of *Atherton et al. v. Fowler et al.*, 23 L. ed. 265, states the rule as to which court the writ of error should be directed in order to procure the production of the record in the Supreme Court of the United States, as follows :

“ The rule may, therefore, be stated to be,

that if the highest court has, after judgment, sent its record and judgment in accordance with the law of the state to an inferior court for safe-keeping, and no longer has them in its own possession, we may send our writ either to the highest court or to the inferior court. If the highest court can and will, in obedience to the requirement of the writ, procure a return of the record and judgment from the inferior court, and send them to us, no writ need go to the inferior court; but, if it fails to do this, we may ourselves send direct to the court having the record in its custody and under its control. So, too, if we know the record is in the possession of the inferior court and not in the highest court, we may send there without first calling upon the highest court; but if the law requires the highest court to retain its own records, and they are not in practice sent down to the inferior court, our writ can only go to the highest court. That court being the custodian of its own records, is alone authorized to certify them to us."

So, too, the clerk of the Supreme Court of the State of Oklahoma, by statute, is alone authorized to certify or exemplify a record of the proceedings had and taken in the Supreme Court of this state.

Section 8090-o, Bunn's Supplement to the Revised Laws of Oklahoma, specifying the duties of the clerk of the Supreme Court, is as follows:

" 8090-o. *Duties of Clerk.*—The Clerk of the

Supreme Court shall carefully keep a minute of the proceedings of the Supreme Court for each day, drawn up at large in a record book to be kept by him for that purpose; he shall seasonably record the judgments, decree, and orders, and properly bind the decisions of the court; he shall safely keep all records, files, books and papers committed to his charge, and also presses and furniture belonging to his office, and deliver such records, files, books, papers, presses and furniture to his successor in office; and in case of refusal or failure to deliver whatever belongs to his office to his successor, his bond may be put in suit by the Attorney General; he shall prepare for any person, demanding the same, a certified copy of any paper, record, decree, judgment or entry on file in his office, proper to be certified, for the fees prescribed by law; and he shall perform such other services as may be prescribed by law; or are usually performed by persons in like positions and such duties as may be prescribed by the Supreme Court, not in conflict with this act. The transcript filed in the Supreme Court, the process in each case, and the judgment or the decree of the court thereon, shall be the final record in the cause, and certified as such by the clerk whenever an exemplification of the judgment or decree of the court may be required."

The case of *Polleys v. Black River Improvement Co.*, 113 U. S. 81, 28 L. ed. 938, cited and relied upon by counsel for defendants in error as supporting

their right to have the writ of error in this cause dismissed, because of the fact that such writ of error was directed to the Supreme Court of Oklahoma, and not to the inferior court, namely: the District Court of Washington County, Oklahoma, is not in point, because in that case it is specifically stated that the record does not, nor does a copy thereof, remain in the Supreme Court, but is by the Supreme Court remitted to the inferior court, and can be found nowhere else but in the Circuit Court of La Crosse County, the court saying:

“ It appears, by the cases cited to us and by the course of proceedings in such cases in the Wisconsin court, that the record itself is remitted to the inferior court and does not nor does a copy of it remain in the Supreme Court. Though the judgment in the Circuit Court was the judgment which the Supreme Court ordered it to enter, and was in effect the judgment of the Supreme Court, it is the only final judgment in the case, and the record of it can be found nowhere else but in the Circuit Court of La Crosse County.”

That such a course of procedure as is contended for by defendants in error would have been erroneous, is shown by the case of *Underwood v. McVeigh*, 21 L. ed. 952, the syllabus of which is as follows:

“ Where a judgment of an inferior state court

was affirmed in the court of appeals of the state, and upon such affirmance judgment was given in the latter court that the defendant in error recover of the plaintiffs in error his damages and costs, and such judgment was entered in the former court, the writ of error from this court must be directed to such court of appeals, and not to the inferior state court, and if directed to the inferior state court the writ of error will be dismissed.”

Therefore, we respectfully submit the Supreme Court of Oklahoma being the custodian of its own records, the clerk of such court being by law designated as the only one authorized by law to certify to and exemplify such record, was the only court to which this court could properly have directed its writ in order to procure such record, and that to have directed the writ to the District Court of Washington County, Oklahoma, would have been but idle ceremony, as that tribunal could have, and probably would have, truthfully answered such writ by saying that the record of the case as decided by the Supreme Court of Oklahoma was not lodged with it.

We desire to quote further from *Atherton v. Fowler, supra*, wherein it is said:

“ In this case, our writ went to the Supreme Court, and, in obedience to its command, that court has sent us its record. There is now no

need of a further writ, even if the practice in California permitted the transmission of records from the Supreme Court to the inferior courts. But such, as we understand, is not the practice. The Supreme Court is there the sole custodian of its own records. Cases go there upon a transcript of the proceedings in the court below. This transcript is retained in the Supreme Court, and is the foundation of the proceedings there. The transcript is, without doubt, a copy of the proceedings in the court below; but that does not make the record below the record above. The court above acts only upon the transcript, and from that and proceedings thereon its record is made. * * *

“ The motion to dismiss is denied.”

It may be, and probably is, the case that counsel for the defendants in error are laboring under a misconception or misunderstanding of the law, they probably believing, as their brief would seem to indicate, that the offices or objects of a writ of error is to operate upon the parties. That such is not the law is shown by the holding of this court in the case of *Cohens v. Virginia*, 5 L. ed. 262, wherein it is said:

“ Under the judiciary act, the effect of a writ of error is simply to bring the record into court, and submit the judgment of the inferior tribunal to re-examination. It does not in any manner act upon the parties; it acts only on the record.

It removes the record into the supervising tribunal.”

The only appellate procedure in existence in this state being such as is provided by statute, we respectfully submit that subdivision “a” of the first ground of the motion of the defendants in error to dismiss or affirm not only states erroneous propositions of law so far as the jurisdiction of this court is concerned, but is so devoid of merit that the same is not worthy of consideration, except for the purpose of exhibiting to this court the efforts of the defendants in error in their attempt to prevent the plaintiffs in error from making a full presentation to this court of the matters and things involved herein of which it complains, and thereby attempting to prevent a full consideration by this court of the judgments and decisions of the state courts brought here for the purpose of review.

Subdivision “b” of the first ground of the motion of the defendants in error to dismiss or affirm, is as follows:

“ (b) That there is no federal question involved herein.”

The plaintiffs in error invoke the jurisdiction of this court in this case by virtue of section 709 of

the Revised Statutes of the United States. In other words, the plaintiff in error, Harnage, claims title to the land in controversy under an Act of Congress, and the decision of the Supreme Court of Oklahoma in terms or in legal effect was against the right and title so claimed and asserted by Harnage.

Counsel for the defendants in error quote certain language of Mr. Justice MILLER, in *Murdock v. The City of Memphis, et al.*, 20 Wall 590, 22 L. ed. 429. Through inadvertence, or for some other reason, counsel substitute the fifth subdivision of the principles announced by Mr. Justice MILLER in this opinion for the language of the fourth subdivision, and it so happens that the part omitted from the quotation of counsel for the defendants in error announces the principle which is the crux of this case.

We hereupon again quote the material portions of this opinion:

“ 1. That it is essential to the jurisdiction of this court over the judgment of a state court, that it shall appear that one of the questions mentioned in the act must have been raised, and presented to the state court.”

“ 2. That it must have been decided by the state court, or that its decision was necessary to the judgment or decree, rendered in the case.”

“ 3. That the decision must have been against the right claimed or asserted by plaintiff in error under the Constitution, treaties, laws or authority of the United States.”

“ 4. These things appearing, this court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the state court.”

“ 5. If it finds that it was rightly decided, the judgment must be affirmed.”

“ 6. If it was erroneously decided against plaintiff in error, then this court must further inquire, whether there is any other matter or issue adjudged by the state court, which is sufficiently broad to maintain the judgment of that court, notwithstanding the error in deciding the issue raised by the federal question. If this is found to be the case, the judgment must be affirmed without inquiring into the soundness of the decision on such other matter or issue.”

“ 7. But if it be found that the issue raised by the question of federal law is of such controlling character that its correct decision is necessary to any final judgment in the case, or that there has been no decision of the state court of any other matter or issue which is sufficient to maintain the judgment of that court without regard to the federal question, then this court will reverse the judgment of the state court, and will either render such judgment here as the state

court should have rendered, or remand the case to that court, as the circumstances of the case may require."

With these principles in mind, we desire to state briefly the material portions of the record in this case, which bear upon this motion to dismiss or affirm.

As the record has not yet been printed, we are unable to furnish the court with the pages of record where the following statement of fact can be found; at the same time a casual inspection of the record will immediately demonstrate the existence of the facts in the record to which we now allude.

The plaintiff in error, Harnage, and the defendant in error, Martin, are both duly enrolled members of the Cherokee tribe of Indians, and each was, therefore, entitled to an allotment of lands in the Cherokee Nation under the provisions of the so-called Cherokee Treaty, which was an Act of Congress approved July 1, 1902, 32 Stat. L. 716.

At this stage, the important thing to bear in mind is the fact that these parties were entitled to the allotment according to the provisions of this Act of Congress. Therefore, should it appear from the record that Harnage claims a right or title under this act, and that the Supreme Court of Okla-

homa either in terms or in legal effect, decided against that right or title, then the jurisdictional requirement is fully answered.

Harnage, the plaintiff in error, made the first selection of the land in controversy. Having made the first selection, no other member of that tribe could successfully attack his title under this act, excepting upon the condition that at the time of the selection by Harnage this other citizen was the owner of improvements upon the particular tract of land so selected. See section 11, Act of July 1, 1902, *supra*.

Martin, the defendant in error, contested this selection, and upon a trial before the Commission to the Five Civilized Tribes, which was the proper tribunal, the contest was decided in favor of Martin, and the land in controversy awarded to her as her allotment. Harnage prosecuted an appeal to the Commissioner of Indian Affairs, and from the Commissioner of Indian Affairs to the Secretary of the Interior, both of these officials affirming the decision of the Commission to the Five Civilized Tribes, as a result of which, so far as the Interior Department was concerned, the lands in controversy were finally awarded to Martin as her allotment. Thereafter, a patent was duly issued to her, and Harnage brought this action in equity to charge the legal title of Martin with a trust in his favor, on the theory that the

Secretary of the Interior, through a mistake of law, had awarded the lands in controversy to Martin, when the same should have been awarded to Harnage.

The pleadings in the case and the presentation of the cause to the trial and the Supreme Courts of Oklahoma, conclusively demonstrate that Harnage at all times claimed the right or title to this allotment under the provisions of the Act of Congress above referred to. The trial court and the Supreme Court of Oklahoma, in express terms as we contend, or, at any rate, in legal effect, decided against the right or title so asserted by Harnage, therefore the principles of subdivision four of the opinion of Mr. Justice MILLER, in *Murdock v. City of Memphis*, *supra*, already quoted, become at once controlling. It is there stated.

“ 4. These things appearing, this court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the state court.”

Counsel for the defendants in error assert that the one question determined by the tribal court and the Supreme Court of Oklahoma was the sufficiency of the evidence to sustain the case of the plaintiffs in error. Counsel here confuses the function which this court exercises in determining its jurisdiction with

what amounts to a consideration of the case on its merits.

The question now before this court is that stated by the first three subdivisions quoted *supra* from the opinion by Mr. Justice MILLER.

We answer the first subdivision by the statement that the record shows that Harnage claims his right or title to the lands in suit under the Act of July 1, 1902.

We answer the second subdivision by the statement that the record shows that the Supreme Court of Oklahoma, either decided adversely to Harnage's rights under this act, or that its decision upon this question was necessary to sustain its judgment, for the reason that the only law invoked by Harnage as a basis for his claim was the Act of Congress approved July 1, 1902.

We answer the third subdivision by the assertion appearing plainly from the record that the decision of the state court was against the right or title of Harnage asserted under this Act, therefore, in the language of the fourth subdivision, "*these things appearing, this court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the state court.*"

Ground Two of the motion to dismiss or affirm asserts that it is manifest that this writ of error was taken by plaintiffs in error for delay only, and that the questions upon which the decision of said cause depends are so frivolous as not to need further argument.

This ground of the motion, we respectfully submit, like all the preceding grounds, is made upon a general assertion, and in the brief as filed by the defendants in error, the same is not supported by reason or authority, and while a motion to affirm, coupled with a motion to dismiss may, under the rules and decisions of this honorable court, be good pleading, yet we respectfully submit that this ground of the motion, entirely lacking in merit as it does, clearly demonstrates the efforts of the defendants in error to have this court terminate its jurisdiction of this cause, they evidently not courting a full investigation thereof at the hands of this tribunal.

In conclusion, we desire to state that what has been said herein, together with the authorities cited in support thereof, is dealing merely with the jurisdictional feature, as involved in the motion of the defendants in error to dismiss or affirm, and we have not attempted to delve into the merits of the controversy, realizing, as we do, that such would not be proper at this time.

We further submit, as shown by the authorities cited *supra*, this case is one wherein the jurisdiction of this honorable court has attached, and the plaintiffs in error feeling aggrieved at the decision of the Supreme Court of Oklahoma, and believing that error hath been by said court committed to the manifest damage of plaintiffs in error, plaintiffs in error have, by the method provided by law, brought this cause before this honorable court for the purpose of correcting such error, and restoring to plaintiffs in error that to which they believe themselves rightfully entitled.

Ground Three of the motion to dismiss or affirm moves for the vacation of the order of supersedeas, and also moves for the transferring of this cause for hearing to the summary docket.

Upon what theory defendants in error base their right to have the order of supersedeas vacated, or upon what authority, is not stated; however, insofar as this ground of the motion of the defendants in error seeks to have this cause transferred for a hearing to the summary docket, we respectfully submit that this cause is of sufficient importance and of such character as to justify a full presentation to this honorable court of the matters involved, in order that the errors, if any, which have been committed,

may be corrected, and that a proper judgment, adjudicating the rights of the parties, may be rendered; wherefore, plaintiffs in error pray that said cause be not advanced to the summary docket, but that the same be heard and determined after a full presentation, in the usual course, and that the motion of the defendants in error, for an order to dismiss or affirm, be in all things overruled and denied.

Respectfully submitted,

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I.

Harnage, the plaintiff in error, made the original selection of the land in controversy. The record is without dispute as to this fact. Later, the defendant in error, Martin, applied for the land before the Land Office and instituted a contest proceeding against Harnage to determine the title to the allotment. Therefore, the principle for which we are contending is that the only circumstance which would uphold the validity of the claim of Martin against Harnage for these lands was the fact that at the time the lands were selected by Harnage, Martin was the owner of the improve-

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ments on the tract. We further assert on this proposition that the Secretary of the Interior in his decision erred upon two grounds: First, that the decision, itself, does not make the ownership of the improvements the determining circumstance in the issue between these parties, and secondly, if the decision of the Secretary of the Interior did proceed upon this theory, then it must fall for the reason that there was no evidence in the record before the Secretary, nor was there evidence before the Supreme Court of Oklahoma to the effect that at the time Harnage filed Martin was the owner of the improvements on the land in controversy....	25
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II.

Said court erred in holding and deciding that the plaintiff in error, Harnage, was not entitled to have a trust declared in his favor in lands patented to the defendant in error, Martin, by virtue of the fact that the record herein discloses that said Harnage was the owner of the improvements upon said land, and, therefore, entitled to select the same in allotment, by virtue of the provisions of an Act of Congress, approved March 2, 1907, 34 Stat. L. 1220. That accordingly, the plaintiff in error, Harnage, was deprived of a title, right, privilege or immunity claimed by virtue of said act and said decision was against the right, title, privilege or immunity claimed by said Harnage under the provisions thereof 57

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In the
SUPREME COURT OF THE UNITED STATES.
October Term, 1916.

No. 112.

**JESSE L. HARNAGE and THE DELOKEE GAS
AND OIL COMPANY, - - Plaintiffs in Error,**

vs.

**ANNIE M. MARTIN and ROTH, ARGUE & MAIRE
BROTHERS OIL COMPANY,
*Defendants in Error.***

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.**

BRIEF *for* PLAINTIFFS *in* ERROR.

Statement.

This suit involves the title to an allotment of land in the Cherokee Nation. The plaintiff in error, Harnage, and the defendant in error, Martin, are

duly enrolled members of the Cherokee Tribe of Indians, and each claims title to the lands here involved as an allotment.

The plaintiff in error, The Delokee Gas and Oil Company, claims title to an oil and gas lease, through Harnage, and the defendant in error, Roth, Argue & Maire Brothers Oil Company, claims title to a similar lease executed by Martin. The claims of these two corporations may be disposed of at the outset by the assertion that their rights stand or fall with the rights of the particular lessor through whom title is claimed.

The plaintiff in error, Harnage, brought this suit in the District Court of Washington County, Oklahoma, in equity, for the purpose of charging the legal title to the lands herein involved, which stood in Martin, with a trust in his favor, on the ground that the Secretary of the Interior, through a gross misapprehension of the facts or a mistake of law, had awarded the land to Martin, when, under the provisions of the Cherokee Treaty and other Acts of Congress pertaining to the subject, it should have been awarded to Harnage.

Harnage, in his original petition or bill, attached certified copies of all the proceedings before the Department of the Interior in the contest case

between him and Martin, involving the land in controversy. The defendants answered, but inasmuch as the trial court, under the Oklahoma practice, sustained a demurrer to the evidence introduced by the plaintiff in error, Harnage, the allegations of these answers are immaterial. On the trial of the cause, the plaintiffs in error introduced a certified transcript of all proceedings before the Secretary of the Interior involving this allotment, which constituted all of the evidence offered with the exception of a deposition containing the testimony of an employe of the Department of the Interior, showing, as was claimed by the plaintiff in error, a departure by the department from the provisions of a certain Act of Congress. The defendants in error thereupon demurred to this evidence as not constituting a cause of action against the defendants in error, which demurrer was sustained by the trial court, and the petition of the plaintiff in error, Harnage, which was also adopted by The Delokee Gas and Oil Company, dismissed. This judgment was affirmed by the Supreme Court of Oklahoma, and hence a writ of error was issued to the Supreme Court of Oklahoma.

ABSTRACT *of the* PLEADINGS.

While the following treatment of the record in this case may not be in exact conformity with the rules of the court, the record here presented embodies 700 pages of printed matter, and we can lessen the labors of the court to a very great extent, and at the same time present the crucial points involved in this litigation by a concise abstract of the pleadings and the evidence.

The material allegations of the petition of the plaintiff in error are these:

Harnage and Martin are both duly enrolled citizens of the Cherokee Nation. The plaintiff in error, The Delokee Gas and Oil Company, is the lessee of Harnage, and the defendant in error, Roth, Argue & Maire Brothers Oil Company, is the lessee of Martin. (Rec., p. 4, and Rec., p. 33.)

The lands involved were a portion of the lands of the Cherokee Nation subject to allotment. (Rec., p. 4.) They were improved and such improvements were owned by one Mary Thursday and one Samuel Bob, who were of that class of Cherokee citizens denominated, "Delaware-Cherokee Citizens." That such ownership of improvements continued until May

13th, 1904, when the plaintiff in error, Harnage, filed on the lands in controversy, or until the 21st day of June, 1905, when the United States Court for the Northern Judicial District of the Indian Territory, by its order that day made, directed the sale of such improvements by the legal guardian of Mary Thursday, an insane person, and Samuel Bob, a minor, to the plaintiff in error, Harnage. (Rec., pp. 5 and 6, and Rec., pp. 10 and 11.)

That on the 26th day of May, 1904, Martin filed her contest against Harnage. (Rec., p. 8.) The complaint so filed by Martin appears in the record, at page 35, and is to the effect that the improvements on such land were the property of the father of Martin, and that upon his death title thereto vested in Martin. That on the 30th day of June, 1905, Wallace Thursday, the legal guardian of Mary Thursday, an insane person, and Samuel Bob, a minor, the owners of the improvements on said land, filed his petition with the Commissioner to the Five Civilized Tribes, asking that such improvements be certified for sale as the surplus improvements of these Indians, as provided by law. (Rec., pp. 9-10, and Rec., pp. 36-37.) This petition appears in full at pages 36 and 37 of the record. That the Commissioner to the Five Civilized Tribes unlawfully and arbitrarily refused to entertain said petition; refused

to order a hearing thereon, and refused to certify such improvements as the excess improvements of the two Indians referred to. (Rec., p. 10.) That on the 21st day of June, 1905, the United States Court for the Northern Judicial District of the Indian Territory, in a proceeding instituted by Wallace Thursday, guardian, as aforesaid, directed the sale of such improvements to Harnage. (Rec., pp. 10-11.) The two orders entered in this proceeding appear at pages 38, 39, 40 and 41 of the record.

That the contest case between Harnage and Martin, instituted, as aforesaid, was tried at Muskogee, Indian Territory, September 25, 1907, before the Commissioner to the Five Civilized Tribes. Both parties appearing in person and by counsel. (Rec., p. 12.) All of the evidence at this hearing was made a part of the record, pages 43 to 624, inclusive.

That on the 2nd day of January, 1908, the Commissioner to the Five Civilized Tribes, decided the contest case in favor of Martin and awarded the land in controversy to her. (Rec., p. 12, and Rec., p. 598.) That an appeal was prosecuted by Harnage to the Commissioner of Indian Affairs, who affirmed the decision of the Commissioner to the Five Civilized Tribes, and that thereupon an appeal was prosecuted to the Secretary of the Interior, who, on the 10th day of October, 1908, affirmed the decision of the

Commissioner of Indian Affairs. (Rec., pp. 603-606-613.) And that on the 5th day of December, 1908, the Secretary of the Interior denied a motion to review said decision. (Rec., p. 624.)

That thereafter a certificate of allotment and a patent conveying these lands to Martin was duly issued. (Rec., p. 13, and Rec., pp. 654 and 655.)

The plaintiff in error, The Delokee Gas and Oil Company, was made a party plaintiff, and filed its independent petition, adopting the allegations of the petition of the plaintiff in error, Harnage. (Rec., p. 660.)

The defendants in error filed their joint answer, which was a general denial (Rec., p. 629); and thereafter the defendant in error, Martin, filed her separate amended answer to the petition of the plaintiff in error. (Rec., pp. 630-659, incl.)

In view of the fact that the court below sustained a demurrer to the evidence of the plaintiff in error, the allegations of these answers, as we regard the case, are not material.

ABSTRACT of the EVIDENCE.

As already indicated a certified copy of all of the proceedings in connection with this contest case before the Department of the Interior was attached and made a part of the petition of the plaintiff in error, Harnage, and various documents are identified as exhibits, from "A" to "P", inclusive, certified by the Commissioner to the Five Civilized Tribes. (Rec., pp. 625-626.) These proceedings appear in full from pages 35 to 625 of the record. Upon the trial of the cause the following record was made:

" By agreement of counsel in open court no testimony in said cause taken, but said cause was submitted by plaintiffs upon the Exhibits 'A' to 'P', inclusive, attached to plaintiff's petition and certified by the Commissioner to the Five Civilized Tribes, to the admission of which exhibits as evidence counsel for defendants agreed, and the deposition of D. H. Bynum which was read in evidence." (Rec., p. 662.)

At page 674 of the record the following stipulation appears:

" It is further stipulated and agreed that Exhibits 'A' to 'P', inclusive, to plaintiff's amended petition as shown in this record, are

the exhibits introduced by the plaintiff in evidence, and the attorneys for defendants hereby waive the recopying of said exhibits in this record as a portion of the evidence introduced by the plaintiffs at the trial hereof and consent that the court may consider Exhibits 'A' to 'P' inclusive, as shown in this record attached to plaintiff's amended petition as the exhibits introduced by the plaintiffs at the hearing hereof—the purpose of this stipulation being to obviate the recopying of such voluminous exhibits." (Rec., pp. 674-675.)

The purpose of this reference to the record is to show that all proceedings before the Department of the Interior, being Exhibits A to P, inclusive, attached to the petition of the plaintiff in error, Harnage, were introduced and received in evidence, and that the parties stipulated that the inserting of the exhibits in this record, as a part of the petition of the plaintiff in error, should have the same effect as if the exhibits were also copied as part of the evidence introduced at the trial.

This being the situation, we desire to now briefly abstract the material evidence introduced in this cause, and in order that the court may now understand the specific questions arising from the evidence which will be relied upon by the plaintiffs in error, we here announce the following propositions:

- (a) The undisputed evidence in this case will show that Harnage, the plaintiff in error, made the first selection of the land in controversy. This being true, we will contend, as a matter of law, that the only circumstance which would permit the Department of the Interior to award the lands in controversy to Martin, was the fact that in the contest case referred to in these proceedings, Martin introduced some evidence, at least, to the effect that at the time Harnage filed she, Martin, was the owner of the improvements upon the lands in controversy.
- (b) That the Cherokee Treaty makes this the sole test for deciding a contest case, and if there was no evidence before the Secretary of the Interior to the effect that Martin owned the improvements at the time Harnage filed, then a contrary finding by the Secretary of the Interior was a mistake of law, and not an erroneous finding of fact, for which reason the lands should have been awarded to Harnage and not to Martin.
- (c) The Act of Congress, which will be referred to later, granted to Delaware-Cherokee Citizens the right to sell their surplus improvements in a designated manner. The undisputed evidence in this case will show that Mary Thursday and Sam Bob, both of whom were incompetent, were

the owners of the improvements upon the land in controversy. Under this law, the duty devolved upon the Commissioner to the Five Civilized Tribes, upon application and a hearing, to certify *e x c e s s* improvements for sale, where, upon such hearing the applicants were found to be the owners thereof. In this case the undisputed evidence will show that the Commissioner to the Five Civilized Tribes arbitrarily refused to grant a hearing to Mary Thursday and Sam Bob. The undisputed evidence will further show that the United States Court directed the guardian of these incompetents to convey the improvements to Harnage at a valuation to be fixed by the official designated for that purpose by the President. That the Commissioner to the Five Civilized Tribes having arbitrarily refused to grant a hearing to determine this valuation, Harnage has done everything which the law requires of him, and his right to this allotment has been stricken down by the arbitrary and unlawful action of the Commissioner to the Five Civilized Tribes, for which reason the land should have been awarded to Harnage.

With these pivotal questions in mind, we will now proceed to analyze the evidence.

The material evidence bearing upon the ownership of the improvements is as follows:

Testimony of WALLACE THURSDAY, a witness on behalf of Harnage in the contest case before the Department of the Interior: Witness states that he is the husband of Mary Thursday, who was the mother of "Wild Bill" or Bill Bob, who was the father of Annie M. Martin. (Rec., p. 89.) That he married Mary Thursday twenty-two years before the date of this hearing, which was September 25, 1907; that he did not make the improvements on the lands in controversy, but bought the same from Johnson and Keeler (Rec., p. 89) fifteen or sixteen years before the date of the hearing; paid eight hundred dollars therefor, which money belonged to Sam Bob and Mary Thursday. That he did not use any money belonging to "Wild Bill" or Annie Martin in either making or improving the original Thursday improvements or the improvements on the land in controversy; that the improvements purchased from Johnson and Keeler consisted of two hundred and fifty acres, and the eighty acres in controversy was a part of the same. (Rec., pp. 89 and 90.) That during the year 1904 Fields and Nuckols were the tenants on the land in controversy, and witness got one-third of the crop. Witness got all of the crops on the land since the purchase from Johnson and Keeler

in 1893, and that no one else ever got any crops from such land during this time. (Rec., p. 92.) That he never told George Martin or Annie Martin, his wife, that they could file on the land in controversy. That Mary Thursday is mindless and has been in that condition twenty years. (Rec., p. 93.)

On cross examination witness stated that he drew the Delaware payment moneys of Mary Thursday and Sam Bob and used the same to pay a store account due Johnson & Keeler, and with the balance bought the farm already referred to. (Rec., pp. 96-97-98.)

Witness WILLIAM JOHNSON, introduced on behalf of Harnage at the trial of the contest case, testified:

That he was acquainted with the land in controversy, broke part of the land in '86 or '87. (Rec., p. 61.) Later sold the same to one Jacob Wheeler; in 1891 the firm of Johnson and Wheeler bought it back. In 1893, witness and Keeler, the then owners of the Wheeler farm which included the land in controversy, sold the same to Mary Thursday and Sam Bob for eight hundred dollars, the Delaware payment moneys of these persons being applied to the purchase price. Witness specifically states that all of the land in controversy was included in the sale to Mary Thursday and Sam Bob in 1893. (Rec., p. 62.)

The bill of sale given by this witness to Mary Thursday and Sam Bob, covering the improvements on the Jacob Wheeler farm which included, according to the testimony of this witness, the entire eighty acres in controversy, appears at page 35 of the record, and is as follows:

“ Bartlesville, Ind. Ter., July 25, 1893.

“ Know all men by these presents, That for and in consideration of the sum of Eight Hundred Dollars, the receipt of which is hereby acknowledged, we hereby sell, convey and by these presents deliver to Mary Thursday and son Bob, the following described property, the title to which we guarantee and defend, to-wit: All our right, title and interest in certain improvements on about ninety acres of land be the same more or less located in what is known as the Jacob Wheeler farm, situate about four miles South of Bartlesville, Cherokee Nation, Indian Territory, Cooweescoowee District.

“ (Signed) JOHNSON and KEELER.

“Hy Jennings, Witness.

“ Filed Jan. 27, 1910, L. G. Disney, Clerk U. S. Circuit Court Eastern Dist. Okla.”

Witness ANNIE MARTIN, the defendant in error, was introduced on her own behalf at the trial of the contest case, and upon cross examination at page 51 of the record, testified:

“ Q. Do you know as a matter of fact whether the land in controversy was any part of the old Mary Thursday place; do you know that absolutely?

A. Which do you mean, the land I filed on; she bought that place?

Q. May Thursday bought that place?

A. Yes, sir.

Q. From whom did she buy it?

A. Bought it from Bill Johnson.

Q. Whose money did she use in paying for it?

A. I don't know; my brother's, I guess.”

At page 57 of the record, this witness further testified as follows:

“ Q. How do you claim this land?

A. Because my grand-mother bought it with father's money.

Q. You say she used your payment money in purchasing that?

A. No, I didn't say anything about that.

Q. Do you know what money she used in buying that from Johnson?

A. She used her money and my brother's money.

Q. Sam Bob's? A. Yes, sir.”

At page 54 of the record, this witness testified:

“ Q. When was this house which has been mentioned in the testimony put on the place?

A. I started it along the last or middle of May of this year (1907).

Q. And you are now living on the place in that house? A. Yes, sir.

Q. You filed your contest case in 1904?

A. Yes, sir.

Q. Your father never put any improvements on the eighty acres that you have filed on, had he? A. No.

Q. And the only improvements that you have ever put on the place is this little house you have described? A. Yes, sir.

Q. But you did have some sort of understanding with Wallace Thursday and Mary Thursday that they would permit you to file on there when the time for selecting allotment came? A. Yes, sir.

Q. And that was in 1898? A. Yes.

Q. The time you married? A. Yes, sir."

On the second question of fact suggested above, the evidence is as follows:

D. H. BYNUM testified that he was Chief Clerk in the office of the Commission to the Five Civilized Tribes and has the custody of all papers filed in connection with the application of Cherokee-Delaware citizens for the certification of their improved surplus holdings under certain Acts of Congress. (Rec., p. 663.) The witness identifies the petition above

referred to and stated that the same was filed with the Commission to the Five Civilized Tribes June 30, 1905 (Rec., p. 663). The petition referred to is the petition of Wallace Thursday, legal guardian of Samuel Bob and Mary Thursday, made a part of witness' deposition, and appearing at pages 667 and 668 of the record. The witness testified as follows as to the disposition of this petition:

“ Mr. Bynum, will you state what action, if any, was taken on this petition either by the Commission to the Five Civilized Tribes or by the Commissioner to the Five Civilized Tribes?

A. The records of the Commission appear to be incomplete as to this point. While there is a carbon copy of a setting of said petition for hearing in the Cherokee Land Office at Tahlequah July 26, 1905, at 8 o'clock A. M., there is no date attached to said notice, nor is there any other record to show that a hearing was had at such time.

Q. Mr. Bynum, if the notice described by you had in fact been set out what evidence would there be in the files of this proceeding showing that the same were sent you?

A. There would be probably registry return receipts, but I do not believe they were inclosed by letter as the notice was complete in itself.

Q. What have you to tell on the question as to whether or not these notices which have just

been referred to by you were in fact sent out by the Commission to the Five Civilized Tribes?

A. To the best of my information they were not sent out.

Q. I will ask you to state whether or not you have any record of a hearing had on this application which has been introduced in evidence?

A. There is no record of a hearing on this application, at least so far as the lands in controversy in this case are concerned."

On cross examination this witness said:

" Q. Mr. Bynum, what eventually became of the petition filed by Wallace Thursday as legal guardian of Mary Thursday to have certain lands set apart as surplus holdings as a Delaware-Cherokee citizen?

A. There was no action taken by the Commission to the Five Civilized Tribes and the petition appears to have been withdrawn upon application of Sam Bob and Wallace Thursday.

Q. When was the withdrawal of the petition of Sam Bob filed with the Commission?

A. It was filed December 16, 1907." (Rec., p. 664.)

The witness then identified the instruments for the withdrawal of this application. (Rec., p. 665.) They were made a part of his deposition, and appear

at pages 668, 669 and 670 of the record, and it is to be noted that in both cases the applications were withdrawn without prejudice to the rights of Harnage, the plaintiff in error.

The witness, in explanation of the failure to certify these matters, and also to explain the practice of the Commission, said:

“ The records show that owing to the pendency of contest between Hettie and Bob action was suspended on such petition until the case just mentioned should be finally decided and was not finally passed on for the reason that on December 16, 1907, Sam Bob for himself—he having become of age—and on December 5, 1907, Wallace Thursday, as guardian of Mary Thursday, filed motions withdrawing said petition.” (Rec., pp. 665 and 666.)

“ The practice was to set the case for hearing after notifying all parties who appeared to be interested and to develop facts as to ownership of improvements as provided by the Act of April 21, 1904, and March 3, 1905, in conformity to those two laws.” (Rec., p. 666.)

Further Proceedings.

Upon the introduction of the evidence of the plaintiffs in error, the defendants in error, under the practice in Oklahoma, demurred to such evidence on the ground generally that the evidence did not show facts sufficient to constitute a cause of action in the plaintiffs in error. (Rec., p. 671.) The court sustained this demurrer; exceptions were saved by the plaintiffs in error, and plaintiffs' cause of action was dismissed. Judgment for costs being entered against plaintiffs in error in favor of defendants in error. (Rec., p. 672.) An appeal was prosecuted to the Supreme Court of Oklahoma, the opinion appearing at pages 683 to 688, inclusive, of the record. Judgment of the trial court was affirmed and on the 27th day of January, 1914, a petition for a rehearing was denied by the Supreme Court of Oklahoma. (Rec., p. 689.)

ASSIGNMENT of ERRORS.

The following constitute the assignments of error, as appear at pages 692 and 693 of the record.

First. Said court erred in holding and deciding that the plaintiff in error, Harnage, a citizen of the Cherokee Indian Nation, was not entitled to have a trust declared in his favor, in lands patented to the defendant in error, Martin, also a citizen of said nation, by virtue of the fact that the record herein discloses that said Harnage made a prior selection of said lands in allotment, and inasmuch as the record further discloses that at the time of such prior selection by Harnage, the defendant in error, Martin, was not the owner of the improvements on said lands. That, accordingly, that plaintiff in error, Harnage, was deprived of a title, right, privilege or immunity claimed by virtue of an Act of Congress approved July 1, 1902, 32 Stat. L. 716, and said decision was against the title, right, privilege or immunity claimed by said Harnage under said act.

Second. Said court erred in holding and deciding that the plaintiff in error, Harnage, was not en-

titled to have a trust declared in his favor in lands patented to the defendant in error, Martin, by virtue of the fact that the record herein discloses that said Harnage was the owner of the improvements upon said land, and, therefore, entitled to select the same in allotment, by virtue of the provisions of an Act of Congress approved March 2, 1907; 34 Stat. L. 1220. That, accordingly, the plaintiff in error, Harnage, was deprived of a title, right, privilege or immunity claimed by virtue of said act and said decision was against the right, title, privilege or immunity claimed by said Harnage under the provisions thereof.

Third. Said court erred in holding and deciding that the defendant in error, Martin, was entitled to a patent from the Cherokee Nation covering the lands in controversy herein, when under various Acts of Congress relating to the allotment of lands of the Cherokee Nation among the citizens thereof in severalty the plaintiff in error, Harnage, was entitled to a patent from the Cherokee Nation covering said lands, in consequence of which said Harnage was deprived of a title, right, privilege or immunity claimed by virtue of said acts, and said decision was against said rights of said Harnage claimed thereunder.

Fourth. That under said Acts of Congress a preferential right vested in a Cherokee citizen to select a particular tract of land, in allotment, arose only when such citizen was the owner of the improvements upon said tract, and as there was no evidence in the record herein to the effect that the defendant in error, Martin, was the owner of the improvements upon the lands in controversy herein at the time of the prior selection of the same by the plaintiff in error, Harnage, that said court erred in affirming the judgment of the trial court sustaining a demurrer to the evidence of the plaintiff in error, Harnage, thereby depriving said Harnage of the right, title, privilege or immunity asserted by him in pursuance of the Acts of Congress aforesaid.

Fifth. The Supreme Court of Oklahoma committed error in denying to the plaintiffs in error the relief prayed for by them in their bill, or petition, filed herein.

JURISDICTION.

Defendants in error have filed a motion to dismiss or affirm on two grounds, one of which was that a writ of error in this case was improperly issued, in that it was addressed to the Supreme Court of Oklahoma instead of to the District Court of Washington County, Oklahoma. We filed a brief in this court in opposition to this motion, to which reference is now made, for the consideration of the court. We there contended that in view of the fact that the Supreme Court remained the custodian of the record in this case after the mandate issued that the writ of error was properly directed to that court.

The second objection to the jurisdiction was that this case did not present a federal question. This being a contest between two Cherokee Indians respecting the allotment of a particular tract of land, such allotments being made in pursuance of Acts of Congress, this court has oft times entertained jurisdiction of causes of a similar nature.

- Ross v. Stewart*,
227 U. S. 530, 57 L. ed. 626;
- Ross v. Day*,
232 U. S. 110, 58 L. ed. 528;
- Quinby v. Conlan*,
104 U. S. 420, 25 L. ed. 801;
- Hy-Yu-Tse-Mil-Kin v. Smith*,
194 U. S. 401, 48 L. ed. 1039.

ARGUMENT on the MERITS.

Assignments 1, 3 and 4 present a single question, and will be so discussed. Concisely stated the proposition contended for by us under these assignments is this:

Harnage, the plaintiff in error, made the original selection of the land in controversy. The record is without dispute as to this fact. Later, the defendant in error, Martin, applied for the land before the Land Office and instituted a contest proceeding against Harnage to determine the title to the allotment. Therefore, the principle for which we are contending is that the only circumstance which would uphold the validity of the claim of Martin against Harnage for these lands was the fact that at the time the lands were selected by Harnage, Martin was the owner of the improvements on the tract. We further assert on this proposition that the Secretary of the Interior in his decision erred upon two grounds: *First*, that the decision, itself, does not make the ownership of the improvements the determining circumstance in the issue between these parties, and *secondly*, if the decision of the Secretary of the Interior did proceed upon this theory, then it must fall for the reason that there was

no evidence in the record before the Secretary, nor was there evidence before the Supreme Court of Oklahoma to the effect that at the time Harnage filed Martin was the owner of the improvements on the land in controversy.

The material provisions of the so-called Cherokee Treaty, 32 Stat. L. 716, are as follows:

“ *Sec. 6.* The word ‘select,’ and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for particular tracts of land.”

“ *Sec. 11.* There shall be allotted by the Commission to the Five Civilized Tribes, and to each citizen of the Cherokee tribe, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, *which land may be selected by each allottee so as to include his improvements.*”

“ *Sec. 18.* It shall be unlawful after ninety days after the ratification of this act by the Cherokees, for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly

or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, *either for himself or for his wife, or for each of his minor children, if members of said tribe*; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this act, shall be deemed guilty of a misdemeanor."

As will appear later, both the Secretary of the Interior and the Supreme Court of Oklahoma made no attempt to track this law. In neither opinion is there a definite finding that Martin owned the improvements on the lands in controversy at the time Harnage filed. Conceding the necessity for clothing the Secretary of the Interior with discretion and general supervisory power relating to Indians, it is still the law that the Secretary in administering affairs of the Indians is limited by the precise letter of the Federal Statutes.

—*Goldsby v. Garfield*,
211 U. S. 249, 53 L. ed. 168;

Turner v. Seep,
179 Fed. 74;

Morrison v. Burnett,
154 Fed. 617;

Evans-Snyder-Buel Co. v. McFadden,
105 Fed. 293;

Wilcox v. McConnell,

13 Pet. 498, 10 L. ed. 264;

Burfenning v. Chicago etc. R. Co.,

163 U. S. 321, 41 L. ed. 175;

Deweese v. Reinhard,

165 U. S. 386, 41 L. ed. 757.

Section 11 of the treaty quoted above provides that the sole test for determining a contest before the Interior Department where members of the Five Civilized Tribes assert conflicting claims to a tract of land in allotment. This test is the ownership of the improvements upon the allotment. In the absence of this provision, the first Indian appearing before the Land Office and making formal application will acquire the title to the land, as the act of selection marks the inception of title.

—*Shipley v. Coulan,*

91 U. S. 330, 23 L. ed. 424;

Hy-Yu-Tse-Mil-Kin v. Smith,

119 Fed. 114;

Hy-Yu-Tse-Mil-Kin v. Smith,

194 U. S. 401, 48 L. ed. 1039.

In the absence of this provision, the principle just announced would apply regardless of the ownership of the improvements. Congress, however, legislated in the light of conditions then existing in the Cherokee Nation. For several generations the

lands of the tribe had been improved, and it was but natural that the law should be so framed as to protect these Indians in their improvements. For many years prior to the adoption of the Cherokee Treaty the improvements on land constituted the sole immovable property of the Cherokee people. A "farm" in our acceptance of the term was known as an "improvement" among the Cherokees. Improvements passed by bills of sale, were transmitted by will, descended to the heirs, and were sold by administrators to pay the debts of decedents. All of these things were provided for under the positive law of the Cherokees and the adjudications of the Cherokee Courts. Manifestly then, this was a property right which demanded protection, and even if Congress had not deemed it best to provide that protection, local conditions would have induced the Cherokee people to repudiate the treaty unless provision was made to protect them in their most valuable property right. It was under these conditions that Congress ordained, "which land may be selected by each allottee so as to include his improvements."

Here we have the positive mandate of Congress, which protects an Indian in his improvements. Therefore, if a stranger to the improvements first selected the land in allotment the real owner had a right under this provision to contest that selection. Under

the rules of practice of the Commissioner to the Five Civilized Tribes, he was required to file a complaint; the very essence of which was the allegation that the contestant was the owner of the improvements at the time the contestee filed. If the contestant supported this allegation by proper proof, the lands were awarded to him. If he failed, however, to establish the ownership of the improvements in himself, the Indian first selecting the land prevailed regardless of the ownership of the improvements resting in some other Indian who was not a party to the suit.

Section 18 reflects another condition existing at the time this treaty was made. Numerous Cherokees owned improvements covering lands in excess of the amount which they and their family were entitled to take in allotment. Moreover, hundreds of full-bloods were without improvements of any character; therefore, the necessity for this section. It is here provided that after the expiration of ninety days after the ratification of the treaty it was unlawful for any member of the tribe, either directly or indirectly, to enclose or hold possession of more lands than would provide allotments for himself, wife, and for each of his minor children. Not only was this forbidden, but a violation of the statute was made a misdemeanor. Here we have a declaration of public policy. Therefore, this law was violated

if a member of the tribe sought to hold possession of land even for one of his adult children. We lay strong emphasis upon the use of the term "for each of his minor children." This term would exclude an adult child, and for an infinitely stronger reason, would exclude "adult grand-children." The scope of this provision is of the utmost importance considering the opinions rendered by the Secretary of the Interior and the Supreme Court of Oklahoma in this case. If then, the law of this case is that the Secretary of the Interior erred unless he found that Martin was the owner of the improvements upon the lands in controversy when Harnage filed, or that the Secretary erred if a finding of this kind was made, and there was no evidence whatever to support it, it becomes important to ascertain the precise holding of the Secretary of the Interior on this question.

The full text of the opinion of the Secretary of the Interior appears at pages 613 to 620 of the record. On page 613 appearing a finding to the effect that Harnage made the first selection of the land in controversy. On the question of the ownership of the improvements, this seems to be the finding:

" The land claimed by contestant is part of a large tract known as the Thursday place, held in 1904 and for several years prior thereto by a family of which her grandmother, who is a registered Delaware, is the Indian head.

“ The northern portion of said place was acquired by the Thursday family about the year 1893 through purchase of improvements thereon as well as the possessory right thereto in which were invested the money of Mary Thursday and her grandson Samuel Bob. The southern portion was held and occupied by the family for several years prior to 1893 but whether obtained through purchase or original segregation the record does not disclose. After 1893 the two tracts taken as a whole were held by the family collectively as one place.” (Rec., pp. 613 and 614.)

“ It further appears that prior to 1904, the contestant was informed time and again by Wallace and Mary Thursday, in whose physical possession the farm remained, that she had an interest in the Thursday holdings and was entitled to share therein as one of the family and because of the fact that the said payments in which she had an interest were collected by her grandmother. On one occasion shortly after her marriage, she was given positive assurance to the effect that she was to have a portion of the land.” (Rec., p. 614.)

While the Secretary wrote an extended opinion in this case, the above quotations are as exact an expression of the findings of fact as we are able to deduce from the somewhat involved opinion. The conclusion of the Secretary, which, we understand

is an announcement of the law of the case, is as follows:

“ The Department concludes that the contestant, Annie Martin, became a member of the Thursday family in early childhood and that she continued to be such until her marriage in 1898. Part of this time, it is true, her residence with the family was constructive only, but throughout the whole of that period she was undoubtedly, in legal contemplation, a member of said family. Surely there is no presumption of law that her interest in the old Thursday place ceased merely because of her abduction therefrom and the unlawful appropriation by others of money due her. Of course, her absence while attending school, is not to be construed in any way to the prejudice of her rights as a member of the family, or to militate against her interest in the Thursday holdings.

“ Before her marriage, the Act of June 28, 1898 (30 Stat. 495), became law. Section 11 of said act reads in part as follows: *Provided further*, That whenever it shall appear that any member of the tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires.

“ This act guaranteed to each Indian citizen the right to select in allotment his home. That right was preserved, not only to the head of the family but also to each person who might properly be regarded as a member of the family oc-

cupying the place. But the claim of Annie Martin to share in the lands held by the Thursday family does not rest alone upon the fact that she resided on a portion of such lands and made her home thereon. The payments due her as a member of the tribe and as the heir of her father were actually made to Mary Thursday as the head of the family. This is important because it is evidential that the home of the latter was also the home of Annie Martin, and for the further reason that it tends of itself to show that said home was maintained and made possible by both.

“ That Annie Martin had an interest in the Thursday holdings, considered as a whole, was apparent, not only from her own testimony, but also from that of others. * * * ” (Rec., p. 617.)

“ It may be contended that contestant never actually lived upon the land, but that, if entitled to any part whatever of the Thursday farm, she should have contested with Mary Thursday the right to select the original home place. The Department finds, however, that after the northern and southern portions of said farm were merged into one place, there was a recognized community of interest among the members of the family, growing out of their relationship and the mingling of their funds, whereby each had an interest in every part of the family holdings. It follows that when Samuel Bob elected to take his allotment in the northern part of the place and Mary Thursday to take hers in the southern part thereof, they impliedly relinquished to the

contestant, *i. e.*, to the remaining Indian member of the family their interest in the tract lying between their allotments." (Rec., pp. 618-619.)

" Premises considered, the Department is convinced that the contestant is entitled to select as her allotment the land claimed by her. Clearly the equities of the case are entirely on her side. Her interest in the land is not only greater than that of contestee but also of prior origin. The provisions of law cited above also confirm her right. On the other hand, the Department is thoroughly convinced that the contestee's claim is purely speculative and without merit; that he has at best but a naked paper title to the land unsupported by any right or equity, and that he has permitted himself to be a party to a series of transactions which were morally wrong." (Rec., p. 620.)

The real gist of the decision of the Secretary of the Interior was that the Thursday farm, of which the land here in controversy was a part was a community estate, or community interest, shared by Mary Thursday, Samuel Bob and Annie Martin. Bob having provided himself with an allotment out of the community property, and Mary Thursday having done likewise, the remaining land was subject to allotment by the defendant in error, Annie Martin. The Supreme Court of Oklahoma likewise adopted this view. (Rec., pp. 687-688.) Therefore, the first proposition we are called upon to meet is whether

an alleged community interest between members of an Indian family answers the requirements of the Cherokee Treaty.

It is evident that both the Secretary of the Interior and the Supreme Court of Oklahoma considered this case from a standpoint which is proper only where the rights of tribal Indians are involved. In the case of tribal Indians, the family is the controlling factor, and all things revolve around the head of the Indian family. Manifestly, the application of this principle is not in consonance with conditions which prevailed in the Cherokee Nation, or with the provisions of the Cherokee Treaty. There was no such thing in the Cherokee Nation prior to the Cherokee Treaty as community ownership. A Cherokee Indian owned an improvement just as a white man owns a farm. He could convey that improvement to any other Indian just as a white man could convey his farm. He could dispose of the improvement by will, and if he died intestate, it descended in accordance with the laws of descent of the Cherokee Nation. It is most significant that the Secretary of the Interior in his opinion at no time quoted the provisions of the Cherokee Treaty. The Secretary applied the provisions of the Curtis Act of June 28, 1898, and not an acre of the lands of the Cherokees were allotted under that act.

Turning now to a critical examination of the findings of fact and conclusions of law of the Secretary of the Interior, which, in principle, were adopted by the Supreme Court of Oklahoma, and made the basis of its decision, we find this to be the case :

The undisputed proof in this case will show that the lands in controversy here were conveyed to Mary Thursday and Sam Bob, and were paid for by the payment money of these two Indians. There was absolutely no dispute about this fact in the record before the Secretary, and as we intend to discuss the fact that there was no evidence before the Secretary to sustain the finding that Annie Martin owned the improvements later, we will confine our attention to the findings made. The Secretary found that the land in controversy was part of a large tract known as the Thursday place. That Mary Thursday, the grandmother of the defendant in error, Annie Martin, was the Indian head of the Thursday family. That the northern portion of the place was acquired by the Thursday family in 1893 by the money of Mary Thursday, and her grand-son, Samuel Bob. It is manifest, therefore, that Annie Martin had no individual or several right to the northern portion of this place, because it was bought and paid for by Mary Thursday and Sam Bob and conveyed to them jointly. The Secretary then finds that the southern

portion was held and occupied by the family for several years prior to 1893, but whether obtained through purchase or original segregation, the record does not disclose. Here again, there is no finding that Annie Martin either purchased or segregated the southern portion of the place. The Secretary does find that some of the Delaware payment moneys belonging to Martin were collected by Mary Thursday, but these funds are not traced to the purchase or segregation of any of these lands. The Secretary further finds that Annie Martin at one time was a member of this family, and finds that on several occasions, Wallace Thursday and Mary Thursday stated to Annie Martin that she had an interest in the lands, and was entitled to share therein, but there is no finding that when these assurances were given they referred to the particular tract of land in controversy. These general statements might just as well support a claim of title in Annie Martin to the lands selected by Mary Thursday or to the lands selected by Samuel Bob.

It is on the basis of these findings that the land was awarded to Martin. The Secretary finds that in 1898, Annie Martin was eighteen years old. Therefore, she was an adult when the Cherokee Treaty was adopted in 1902. In the light of these findings, the question which arises is whether the alleged com-

munity interest, such as the Secretary of the Interior found to exist in this case is sufficient to create a priority of right under the provisions of the Cherokee Treaty.

In answer to this question, we assert with positive conviction, that sections 11 and 18 of the Cherokee Treaty, already quoted, furnish a conclusive answer. Section 6 of the treaty, Act of July 1, 1902, 32 Stat. L. 716, defines the word "select" to mean formal application at the land office for particular tracts of land.

Section 20 of the same act provides for the selection of an allotment in the name of a deceased person by his administrator or executor.

Section 70 of the same act provides for the selection of allotments for minors by the father or mother, if citizens, or by the guardian or curator. The same section provides for the selection of allotments for other incompetents. In the case of an adult, however, the selection must be made, under the treaty, by the member of the tribe, himself. Therefore, this portion of section 11 of the act becomes material, "which land may be selected by each allottee so as to include his improvements." Obviously no communal interest is contemplated by this language. Not only does section 11 destroy the

principle according to which this case was decided, but section 18 goes further. It is here provided: "It shall be unlawful after ninety days after the ratification of this act by the Cherokees for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, either for himself or for his wife, or for *each of his minor children*, if members of said tribe."

The same section then declares that a violation of this section shall constitute a misdemeanor.

Section 19 of the act provides: "The United States district attorney for the northern district is required to see that the provisions of said section eighteen are strictly enforced, and he shall immediately, after the expiration of the ninety days after the ratification of this act, proceed to prosecute them for so unlawfully holding the same."

The Cherokee Treaty was ratified August 7th, 1902, and, therefore, the ninety-day period expired November 5th, 1902. At all times thereafter it was against the express provisions of the Cherokee Treaty to hold lands in the manner which the Secretary of the Interior sought to sustain in this case. The

provision of the treaty limits the holdings of the head of an Indian family to allotments for his minor children; his adult children being expressly excluded. If the adult children are excluded by this provision, there is stronger reason for saying that the adult grand children would be excluded, and the Secretary in this case found, as a fact, that Annie Martin was an adult in 1902.

Summarizing then, section 11 destroys the holding that community ownership will prevail against prior selection, and section 18 destroys the argument that Mary Thursday at the time Harnage filed had a right to hold the lands here in controversy for the benefit of the defendant in error Annie Martin.

The foregoing argument has proceeded upon the theory that the Secretary of the Interior made no finding to the effect that Annie Martin at the time Harnage filed was the owner of the improvements upon the specific land in controversy. Assuming this to be the real test, we now maintain that there was no evidence before the Secretary of the Interior, nor was there any evidence before the Supreme Court of Oklahoma, nor is there any evidence in this record, to support a finding that when Harnage filed Annie Martin was the owner of the improvements on the land in controversy.

The record shows this:

Testimony of Wallace Thursday, a witness on behalf of Harnage in the contest case before the Department of the Interior: Witness states that he is the husband of Mary Thursday, who was the mother of "Wild Bill" or Bill Bob, who was the father of Annie M. Martin (Rec., p. 89). That he had married Mary Thursday twenty-two years before the date of this hearing, which was September 25, 1907; that he did not make the improvements on the lands in controversy, but bought the same from Johnson and Keeler (Rec., p. 89) fifteen or sixteen years before the date of the hearing; paid eight hundred dollars therefor, which money belonged to Sam Bob and Mary Thursday. That he did not use any money belonging to "Wild Bill" or Annie Martin in either making or improving the original Thursday improvements or the improvements on the land in controversy; that the improvements purchased from Johnson and Keeler consisted of two hundred and fifty acres, and the eighty acres in controversy was a part of the same. (Rec., pp. 89 and 90.) That during the year 1904 Fields and Nuckols were the tenants on the land in controversy, and witness got one-third of the crop. Witness got all of the crops on the land since the purchase from Johnson and Keeler in 1893, and that no one else ever got any crops from such

land during this time (Rec., p. 92). That he never told George Martin or Annie Martin, his wife, that they could file on the land in controversy. That Mary Thursday is mindless and has been in that condition twenty years (Rec., p. 93).

On cross examination witness stated that he drew the Delaware payment moneys of Mary Thursday and Sam Bob and used the same to pay a store account due Johnson & Keeler, and with the balance bought the farm already referred to. (Rec., pp. 96-97-98.)

Witness William Johnson, introduced on behalf of Harnage at the trial of the contest case, testified:

That he was acquainted with the land in controversy, broke part of the land in '86 or '87. (Rec., p. 61.) Later sold the same to one Jacob Wheeler; in 1891 the firm of Johnson and Wheeler bought it back. In 1893, witness and Keeler the then owners of the Wheeler farm which included the land in controversy, sold the same to Mary Thursday and Sam Bob for eight hundred dollars, the Delaware payment moneys of these persons being applied to the purchase price. Witness specifically states that all of the land in controversy was included in the sale to Mary Thursday and Sam Bob in 1893 (Rec., p. 62).

The bill of sale given by this witness to Mary Thursday and Sam Bob, covering the improvements on the Jacob Wheeler farm, which included, according to the testimony of this witness, the entire eighty acres in controversy, appears at page 35 of the record, and is as follows:

“ Bartlesville, Ind. Ter., July 25, 1893.

“ Know all men by these presents, That for and in consideration of the sum of Eight Hundred Dollars, the receipt of which is hereby acknowledged, we hereby sell, convey and by these presents deliver to Mary Thursday and son Bob, the following described property, the title to which we guarantee and defend, to-wit: All our right, title and interest in certain improvements on about ninety acres of land be the same more or less, located in what is known as the Jacob Wheeler farm, situate about four miles south of Bartlesville, Cherokee Nation, Indian Territory, Cooweescoowee District.

“ (Signed) JOHNSON and KEELER.

“ Hy Jennings, Witness.

“ Filed Jan. 27, 1910, L. G. Disney, Clerk U. S. Circuit Court Eastern Dist. Okla.”

Witness Annie Martin, the defendant in error, was introduced on her own behalf at the trial of the contest case, and upon cross examination at page 51 of the record, testified as follows:

“ Q. Do you know as a matter of fact whether the land in controversy was any part of the old Mary Thursday place; do you know that absolutely?

A. Which do you mean, the land I filed on; she bought that place?

Q. May Thursday bought that place?

A. Yes, sir.

Q. Whose money did she use in paying for it?

A. I don't know; my brother's, I guess.”

At page 57 of the record, this witness further testified as follows:

“ Q. How do you claim this land?

A. Because my grandmother bought it with father's money.

Q. You say she used your payment money in purchasing that?

A. No, I didn't say anything about that.

Q. Do you know what money she used in buying that from Johnson?

A. She used her money and my brother's money.

Q. Sam Bob's? A. Yes, sir.”

At page 54 of the record, this witness testified:

“ Q. When was this house which has been mentioned in the testimony put on the place?

A. I started it along last or middle of May of this year (1907).

Q. And you are now living on the place in that house? A. Yes, sir.

Q. You filed your contest case in 1904?

A. Yes, sir.

Q. Your father never put any improvements on the eighty acres that you have filed on, had he? A. No.

Q. And the only improvements that you have ever put on the place is this little house you have described? A. Yes, sir.

Q. But you did have some sort of understanding with Wallace Thursday and Mary Thursday that they would permit you to file on there when the time for selecting allotment came? A. Yes, sir.

Q. And that was in 1898? A. Yes, sir.

Q. The time you married? A. Yes, sir."

A part of the farm so purchased on behalf of Sam Bob and Mary Thursday was selected in allotment by Samuel Bob, and Bob became involved in a contest with one Hedy. In the trial of this cause, by reason of the relation of the two cases, the entire record in the *Hedy-Bob* case was made a part of the record in this case, including the decision of the Secretary of the Interior in the *Hedy-Bob* case. At page 620 of the record, at the conclusion of the opinion of the Secretary of the Interior in this case, it

is said: "The record in the case together with the record in the Cherokee Contest case of *Heady v. Bob*, is returned herewith."

In the opinion of the Secretary in the *Heady-Bob* case, the following appears:

" At that time (April 1, 1904) Bob was a minor, and Mary (Mary Thursday) was insane, such having been her condition for many years." (Rec., p. 336.)

" Some reference to the history of the land in controversy is essential to a clear understanding of the rights of the parties in interest. It is a part of the tract known as the 'Wheeler Farm,' having been held prior to 1893 by one Joseph Wheeler. From him it passed to the firm of Johnson & Keeler, of Bartlesville, Oklahoma. The next transfer was made by this firm by bill of sale dated July 25, 1893, conveying for \$800 the improvements thereon, to Samuel Bob and Mary Anson (or Thursday). This bill of sale forms a part of the record in the case. The consideration for these improvements formed a part of certain payments which were made to Mary and Bob in distribution of Delaware funds. At the first payment, which was made about the year 1891, there was paid to each \$510.00. Two years later, the second payment was made, each receiving at that time \$490.00. In each instance, the money was paid to Wallace Thursday, who seems to have used it entirely as he alone saw fit.

The funds of these incompetents, amounting to about \$1,000 each, were used partly in payment of a store account contracted by Wallace Thursday, and partly in payment for the improvements on the Wheeler Farm. It is claimed on behalf of Bob, and the claim is strongly supported by the evidence, that more than three-fourths of the sum paid for the improvements came from his Delaware money. It is evident that Bob's money, although he was but six years old at the time of the first payment, and eight years old at the time of the second, was used in part to meet the expenses of the family, and in part to provide the home which was enjoyed by him for many years. Consequently, the Department finds that as between Bob and Mary Thursday, he was the principal party in interest (Rec., p. 337) (in the Wheeler Farm). * * *

“ In the light of the complete record, it is now evident that the peculiar course which Samuel Bob has pursued in respect to the valuable property in which he is interested, cannot be explained upon any theory of intelligent self-interest, but is due to the fact that the two oil companies have endeavored to control or determine his action without nice regard to the means employed for the purpose of securing an oil lease covering both the land involved and the 80 acres tract adjoining it on the south, the latter also formed a part of the farm of which the Wheeler place was the nucleus.” (Rec., p. 340.)

“ Applications to select it had been made by Jess L. Harnage and Annie M. Martin, Harnage

was the first of the two to apply for this tract, which is known as the south 80; but Mrs. Martin, who is the full sister of Samuel Bob, has filed contest suit to secure it." * * * (Rec., p. 340.)

Several material observations may be made from these findings of the Secretary in the *Heady-Bob* case. In the first place, the Secretary found that on the first of April, 1904, Samuel Bob was a minor, and Mary Thursday, was a person of insane mind, such having been her condition for many years. These are the other two Indian members of the Thursday family, whose selection of part of the Thursday holdings, as found by the Secretary in this case, left Annie Martin the owner of the balance of the tract. The Secretary found that the Wheeler farm passed from Johnson and Keeler to Mary Thursday and Samuel Bob by bill of sale dated July 25, 1893. That the consideration for these lands was paid by the moneys of Mary Thursday and Samuel Bob, and that about three-fourths of the same belonged to Samuel Bob. The Secretary further found that the land here in controversy was a part of the Wheeler farm.

Now, the only evidence in this record which bears upon the ownership of the improvements on the specific tract of land here involved is that quoted above.

The testimony quoted, and the finding of the Secretary in the *Heady-Bob* case, unite in establishing the fact that the land here in controversy passed from Johnson and Keeler to Mary Thursday, an insane person, and Samuel Bob, a minor, in 1893. Their Indian money being used to pay for the place. Annie Martin, herself, concedes this to be the fact. The Secretary further finds that three-fourths of the moneys so used belonged to Samuel Bob, the minor. Therefore, we assert that if the real test in this case is the ownership of improvements on the specific lands in controversy, then there is no evidence to support a finding that the defendant in error, Annie Martin, was the owner of those improvements at the time Harnage filed.

In the opinion of the Secretary of the Interior in this case, the Secretary, in effect, found that Annie Martin, became a member of the Thursday family and acquired a community interest in the lands of the family, through the assurances of Wallace Thursday and Mary Thursday, the latter being the grandmother of Annie Martin. At the time these alleged assurances were given, the record shows that Wallace Thursday was not an Indian, and therefore had no title to these lands. Mary Thursday was an insane person, and unable to give legal effect to her action. Not only this, at the same time, Samuel Bob,

a minor, owned a three-fourths interest in the lands here in controversy. Therefore, Wallace Thursday, who had no title, and Mary Thursday, an insane person, transferred the title to the improvements here involved, when three-fourths of such improvements belonged to Samuel Bob, a minor. As the record of the evidence in this case covers 500 pages of printed matter, which will burden the court to examine, we here challenge counsel for the defendant in error to set forth in their briefs the specific evidence bearing on these questions :

- (a) Any evidence in the record before the Secretary of the Interior, which is the record now before this court, which supports or tends to support a finding that Annie Martin acquired a community interest in the improvements on the so-called Thursday Farm.
- (b) Any evidence in the record before the Secretary of the Interior, which is the record now before this court, which supports or tends to support a finding that Annie Martin acquired a community interest in the improvements on the specific lands here in controversy.
- (c) Any evidence in the record before the Secretary of the Interior, which is the record here, which supports or tends to support a finding that An-

nie Martin acquired an individual or several interest in the improvements on the so-called Thursday Farm.

- (d) Any evidence in the record before the Secretary of the Interior, or in this record, which supports or tends to support a finding that Annie Martin acquired an individual or several interest in the improvements on the specific lands here in controversy.

A candid response to these four questions on the part of counsel for the defendants in error will greatly simplify the determination of this case by the court. The most which can be said for the defendants in error is this: The defendant in error Martin was the adult grand-child of Mary Thursday. Mary Thursday and Samuel Bob, her grand-son, who was brother of Annie Martin, in 1893 acquired the improvements on a large farm, which included specifically the lands in controversy. The evidence is without dispute that the improvements just referred to were conveyed to Mary Thursday and Samuel Bob and were paid for by their money. At one period during the life of Annie Martin she lived with her grand-mother, and the Secretary made a finding of fact to the effect that some of her Indian payment money went to support the Thursday family. In 1898, which was six years before Harnage filed, An-

nie Martin married, and at no time thereafter until 1907 lived on the Thursday place. The fact that she began living on this place in 1907 has no bearing on this controversy, because Harnage's rights attached when he filed on the 13th of May, 1904, or when in June, 1905, the court directed the sale of the improvements on the land in controversy to him. In either case the right attached before Annie Martin took up her abode on the land in controversy. The Secretary further found that on several occasions before Harnage filed, Wallace Thursday, who had no interest in these improvements, and Mary Thursday, an insane person, gave Annie Martin certain assurances that she might have an allotment from the Thursday holdings. Even in the case of this finding the Secretary does not state that these assurances related to the specific lands here in controversy. Whatever statements were made seemed to have been general in character, relating just as much to the Thursday holdings outside of the tract here in controversy, as to the tract involved in this suit.

In the light of these vague and indefinite findings of fact the issue in this case resolved itself into this question: Does the mere fact that Annie Martin was related to Mary Thursday, coupled with the other facts that she was once a member of the Thursday family and some of her money was used to sup-

port the family, and she received certain assurances from Wallace Thursday and Mary Thursday, the latter an insane person, justify the conclusion that such facts are a sufficient predicate for the establishing of a community interest, whatever that is, in the improvements on the lands in controversy?

As already stated, we firmly believe that sections 11 and 18 of the Cherokee Treaty specifically excluded any such legal effect. Section 11 clearly deals with a separate and individual ownership of improvements. This section contemplates improvements made or improvements purchased by an Indian acting in his individual capacity. There might be instances where several Indians by their joint endeavors, or with their joint funds, acquired some sort of community ownership. There might be instances where an improvement would descend to several heirs, thereby establishing some sort of ownership in common but it must be manifest that section 11 does not contemplate any such legal conception as was the basis of this decision by the Secretary of the Interior.

The Secretary, it is clear, was animated somewhat by the fact that Harnage was a stranger to the Thursday family and that Annie Martin, being a member of the family, had a greater equity in this case. This, however, is precisely the situation which

is dealt with in section 18. Had it been the will of Congress that the head of an Indian family might hold sufficient improvements for any member of his family, or for any dependent, there might be some force in the position taken by the Secretary in this case. Congress, however, for reasons of public policy defined in an exact manner those classes of persons for whom the head of a family might hold improvements. Conceding for the sake of argument that on the 5th of November, 1902, Mary Thursday was holding these improvements for Annie Martin: such holding was in express contravention of section 18. The class to which Annie Martin belonged, that is, the adult grand-child of Mary Thursday, was excluded from the benefit of section 18. If Mary Thursday was in fact holding these improvements for her benefit, she was guilty of a misdemeanor under section 18, and under section 19 of the act it was the duty of the United States attorney to dispossess her as to any lands held for members of the family other than the classes specifically named in section 18. Surely then this somewhat strained equitable consideration will not outweigh the positive declaration of Congress set forth in section 18 of the act.

Questions "c" and "d" which we have addressed to counsel for the defendants in error in our judgment state the material issue in this case. Coun-

sel for the defendants in error will be unable to point to a single item of evidence in this record which supports or tends to support a finding that Annie Martin ever owned the improvements on the tract here in controversy. The only evidence on this question is that these improvements were purchased in 1893 by Mary Thursday and Samuel Bob. This ownership continued until May 13, 1904, when Harnage filed, or until June, 1905, when the United States Court directed the sale of the improvements to Harnage. It is not material to determine exactly which date marked the vesting of title in these improvements in Harnage for the reason that Harnage having filed first, the ownership of the improvements in him is not the controlling circumstance. The inquiry in this case shifted from Harnage when he made the first filing. Then when Annie Martin filed or contested the filing of Harnage, she assumed the burden of proving that at the date of Harnage's filing she was the owner of the improvements. We go to the length of saying that we will concede for the sake of argument that Harnage was not the owner of these improvements when he made this selection. We will further concede that at that time Mary Thursday and Samuel Bob owned these improvements. Had these two Indians contested the claim of Harnage, they would have prevailed because they could have shown that they owned the im-

provements. Ownership in Mary Thursday and Samuel Bob, however, does not constitute ownership in Annie Martin, and the latter having failed to show ownership in her, it is our firm conviction that the Secretary erred in awarding the lands in controversy to her.

The second assignment of error is as follows :

Second: Said court erred in holding and deciding that the plaintiff in error, Harnage, was not entitled to have a trust declared in his favor in lands patented to the defendant in error, Martin, by virtue of the fact that the record herein discloses that said Harnage was the owner of the improvements upon said land, and, therefore, entitled to select the same in allotment, by virtue of the provisions of an Act of Congress, approved March 2, 1907, 34 Stat. L. 1220. That accordingly, the plaintiff in error, Harnage, was deprived of a title, right, privilege or immunity claimed by virtue of said act and said decision was against the right, title, privilege or immunity claimed by said Harnage under the provisions thereof.

The Act of April 21st, 1904 (33 Stat. L. 189), provided as follows :

“ That the Delaware-Cherokee citizens who have made improvements, or are in rightful possession of such improvements, in the Cherokee Nation at the time of the passage of this act, shall have the right to first select from said improved lands their allotments, and, thereafter, for a period of six months, shall have the right to sell the improvements upon their surplus holdings of lands to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose; and the vendor shall have a lien upon the rents and profits of the land on which the improvements are located for the purchase money remaining unpaid; and the vendor shall have the right to enforce such lien in any court of competent jurisdiction. The vendor may, however, elect to take and retain possession of the land at a fair cash rental to be approved by the official so as aforesaid designated, until such rental shall be sufficient to satisfy the unpaid purchase price, and when the purchase price is fully paid he shall forthwith deliver possession of the land to the purchaser; provided, however, that any crops then growing on the land shall be and remain the property of the vendor, and he may have access to the land so long as may be necessary to cultivate and gather such growing crops. Any such purchaser shall, without unreasonable delay, apply to select as an allotment the land upon which the improvements purchased by him are located, and shall submit with his applica-

tion satisfactory proof that he has in good faith purchased such improvements."

And the Act approved March 3, 1905 (33 Stat. L. 1048), extended the period within which Delaware-Cherokee citizens might sell their improvements a further period of six months from the Act of March 3, 1905, such extension being in the following language:

" That Delaware-Cherokee citizens who have made improvements, or were in rightful possession of such improvements upon lands in the Cherokee Nation on April twenty-first, nineteen hundred and four, to which there is no valid adverse claim, shall have the right within six months from the date of the approval of this act to dispose of such improvements to other citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the President for that purpose and the amount for which said improvements are disposed of, if sold, according to the provisions of this act, shall be a lien upon the rents and profits of the land until paid, and such lien may be enforced by the vendor in any court of competent jurisdiction: Provided, that the right of any Delaware-Cherokee citizen to dispose of such improvements shall, before the valuation at which the improvements may be sold, be determined under such regulations as the Secretary of the Interior may prescribe."

The opinion of the Secretary finds that Mary Thursday and Samuel Bob were Delaware-Cherokee citizens. Therefore, they were entitled to the benefit of these Acts of Congress. It will be noted that the first Act of Congress was effective only for six months from its date. The rights there conferred expired therefore October 21, 1904. The Act of March 3, 1905, was also effective only for the period of six months from the date of its approval; that is, the privileges there conferred upon Delaware-Cherokee citizens to sell their surplus improvements expired September 3rd, 1905.

It is to be noted that the improvements sold under this act were to be sold at a valuation to be approved by an official designated by the President. The act further conferred upon the Secretary of the Interior the right to make necessary regulations to determine this valuation. The President designated the United States Indian Agent, as the official to fix the valuation, and under the regulations of the Secretary, it was provided that a Cherokee-Delaware citizen seeking the benefit of the act should apply for a hearing, at which hearing the ownership of the improvements would be determined by the Commissioner to the Five Civilized Tribes, who, if satisfied from the hearing that the applicant owned the improvements, would certify that fact to the Indian

Agent, who would fix the valuation. A copy of these regulations is made a part hereof as an appendix.

On the 30th day of June, 1905, Wallace Thursday, then the legal guardian of Mary Thursday, an insane person, and of Samuel Bob, a minor, filed a petition with the Commission to the Five Civilized Tribes, setting up the ownership of the improvements on the lands here in controversy by Mary Thursday and Samuel Bob, and asking that a date be set for a hearing, to the end that proof might be offered as to the ownership of such improvements, and if upon such hearing it be found that Mary Thursday and Samuel Bob were the owners of such improvements, that the same be certified as the improved surplus holdings of these incompetents. This petition appears in the record at pages 36 and 37.

The testimony of D. H. Bynum, already set forth in this brief, shows that the Commissioners to the Five Civilized Tribes never set this matter for a hearing, but, as explained by the witness, held the matter up pending the decision of the *Heady-Bob* case. It is also explained that when this case was decided no further action was taken because these applications were withdrawn. In the first place, the applications were withdrawn without prejudice to the rights of the plaintiff in error, Harnage, and in

the second place, the applications were not withdrawn at any time during the six months' period that the Act of March 3rd, 1905, was effective. The Act of March 3rd, 1905, provides that Delaware-Cherokee citizens " * * shall have the right within six months from the date of the approval of this act to dispose of such improvements."

Therefore, unless the Commissioner to the Five Civilized Tribes acted upon this application before September 3rd, 1905, Mary Thursday and Samuel Bob lost their right to dispose of these improvements. Their application was not withdrawn until December 15th, 1907.

Up to this stage it cannot be said that the plaintiff in error, Harnage, was prejudiced by this unwarranted action of the Commissioner to the Five Civilized Tribes. It develops, however, that on the 21st day of June, 1905, the United States Court for the Northern Judicial District of the Indian Territory entered its certain orders, authorizing Wallace Thursday, as guardian of Samuel Bob and of Mary Thursday, to sell these improvements to the plaintiff in error, Harnage, at a sum fixed and determined by the person appointed by the President to appraise the improvements. The full text of these orders appear at pages 38, 39 and 40 of the record. Under the

practice then prevailing, these orders were sufficient to consummate this transaction.

—*Cowles v. Lee*,
35 Okla. 159, 128 Pac. 688;
Spade v. Martin,
28 Okla. 384, 114 Pac. 724.

The Secretary of the Interior, in his opinion, on this aspect of the case, said:

“ Such sale was to be conducted in accordance with the regulations of the Department and would, if properly carried out, have given the purchaser the right to select the land as his allotment.”

At this stage, under the proposition now discussed, we have this situation: Mary Thursday and Samuel Bob, both of whom were incompetent, owned the improvements on the lands here involved. Both were Delaware-Cherokee citizens. Unless the vague circumstances referred to by the Secretary of the Interior suffice to divest these Indians of the title to their improvements on these lands, which circumstances occurred when neither was *sui juris*, Mary Thursday and Samuel Bob were still the owners of these improvements at the time they made the application to the Commissioner to the Five Civilized Tribes, already referred to. Under the Act of March

3rd, 1905, they had until September 3rd, 1905, to dispose of their improvements. Under the regulations of the Secretary of the Interior, they could not dispose of such improvements until a hearing was had before the Commissioner to the Five Civilized Tribes, their ownership determined, and that fact certified to the Indian Agent. They made their application in time. The Commissioner arbitrarily refused to grant the hearing, or otherwise carry out the regulations, which, alone, would give these Indians the benefit of this Act of Congress. Harnage, on June 21, 1905, acquired this interest, subject to the regulations of the Secretary of the Interior. Therefore, on the principle that Harnage, having done everything which the law required of him, he will not be permitted to suffer from the omissions of the Commissioner to the Five Civilized Tribes, he, the Commissioner, being an agent of the government. Therefore, the decision of the Secretary of the Interior should have been with Harnage under this proposition.

In the case of *Ard v. Brandon*, 156 U. S. 537, 39 L. ed. 524, it is said:

“ He pursued the course of procedure prescribed by the statute, he made out a formal application for the entry, and tendered the requisite fees, and the application and fees were re-

jected by the officer charged with the duty of receiving them—and wrongfully rejected by him. Such wrongful rejection did not operate to deprive defendant of his equitable rights. * * *

“ If he does all that the statute prescribes as the condition of acquiring rights, the law protects him in those rights, and does not make their continued existence depend upon the question whether or no he takes an appeal from an adverse decision of the officers charged with the duty of acting upon his application.”

See, also :

Hutchins v. Low,
82 U. S. 15 Wall. 77, 21 L. ed. 82.

To the same effect is :

Weeks v. Bridgman,
159 U. S. 541, 40 L. ed. 253.

In the latter case, it is held that the rights of a person filing an application, which is wrongfully acted upon, or rejected, or not recognized, date from the time of the filing of such application.

—*Garrett v. Walcott*,
25 Okla. 574, 106 Pac. 848;
Wallace v. Adams,
143 Fed. 721.

In this brief, our arguments have been directed at the decision of the Secretary of the Interior on the

ground that the Secretary, through an error of law, awarded the lands in controversy to Martin, when the same should have been allotted to Harnage under the provisions of the Cherokee Treaty. In so doing, however, the same objections are urged to the decision of the Supreme Court of Oklahoma. On the question of community ownership being sufficient to establish a preferential right in Annie Martin, the Supreme Court of Oklahoma follows the decision of the Secretary. On the second assignment of error, just discussed, while the question was fully presented to the Supreme Court of Oklahoma, the court ignored the point. Therefore, this brief very properly is a discussion of the decision of the Supreme Court of Oklahoma, as well as of the Secretary of the Interior.

Summarizing then, it is our earnest conviction that the decision of the Supreme Court of Oklahoma should be reversed for the following reasons:

- (a) Harnage, having made the first selection, the burden devolved upon Martin to prove at the time the land was selected by Harnage that she, Martin, was the owner of the improvements upon the specific land in controversy.
- (b) This burden is not sustained by the finding of the Secretary that Annie Martin had a com-

munal interest, which the Secretary found to exist.

- (c) There is no evidence in the record to the effect that a communal interest, in the sense that conferred upon Annie Martin a preferential right to these lands in allotment, ever vested in her.
- (d) At the time of the alleged vesting of the communal interest, Mary Thursday was an insane person and Samuel Bob was a minor. Annie Martin traced her communal interest to these two incompetent persons, and consequently a claim so predicated is without foundation.
- (e) If the real test in this case is a several and individual ownership of the improvements upon the lands in controversy by Annie Martin at the time Harnage filed, there is no evidence in the record to support a finding of this character.
- (f) Where there is no evidence to support a finding of a *quasi-judicial* tribunal, the error is not one of fact, but is an error of law.

—*How v. Parker*,
190 Fed. 738;

Word v. Joslin,
186 U. S. 142, 46 L. ed. 1093;

U. S. Fidelity Co. v. Bd. of Commissioners,
145 Fed. 144;

Laing v. Rigney,
160 U. S. 531, 40 L. ed. 525;

Delaware R. R. Co. v. Converse,
139 U. S. 469, 35 L. ed. 213.

Respectfully submitted,

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Attorneys for Plaintiffs in Error,
Jesse L. Harnage and Delokee Gas
& Oil Company.

APPENDIX.

REGULATIONS.

To carry into effect the provisions of the Act of April 21, 1904, (Public 125), relative to Delaware-Cherokee citizens who had made improvements or were in rightful possession of improvements in the Cherokee Nation at the time of the passage of said Act.

1. All Delaware-Cherokee citizens shall be given a preference at the Cherokee land office of the Commission to the Five Civilized Tribes, and shall be permitted to select their allotments in advance of their regular numbers. Notice of this order shall be sent immediately, by registered letter, to all Delaware-Cherokee heads of families at their last known post office address.

2. All persons listed for enrollment by the Commission to the Five Civilized Tribes as Delaware applicants for enrollment as Cherokee citizens, have the right to institute proceedings, as herein prescribed, unless said applicants have been finally re-

fused enrollment as provided by law; but no application for the benefits of the Act of April 21, 1904, shall be granted until the enrollment of the applicant as a Cherokee citizen shall be approved by the Secretary of the Interior, as provided by law for the approval of the citizenship rolls of the Cherokee Nation. Enrollment cases of this kind will be made special.

3. At the time of the selection of allotments by such Delaware-Cherokee citizens, their testimony shall be taken as to what improved land, and the improvements thereon, they were rightfully holding on April 21, 1904, in excess of the land which they and their families are entitled to take as their allotments.

4. Immediately upon the selection of an allotment by a Delaware-Cherokee citizen, the Commission to the Five Civilized Tribes shall certify to the official designated by the President, under said Act of April 21, 1904, a list of the alleged surplus holdings and improvements thereon of such citizen on the date above mentioned; and the Commission shall withhold from allotment the land upon which the improvements so claimed by the Delaware-Cherokee citizen are located until such claimant shall sell such improvements and the valuation thereof has been duly approved by the official designated for that

purpose by the President, as provided in the act of April 21, 1904.

5. When satisfactory proof of the sale of improvements by a Delaware-Cherokee citizen has been furnished the Commission to the Five Civilized Tribes and the valuation of such improvements has been approved by such designated official, the purchaser shall have the right to make application at the land office to select the land upon which the improvements are located as his allotment, and such selection of allotment shall be subject to contest proceedings regularly instituted before the Commission.

6. If any Delaware-Cherokee shall not, within ninety days from the date of notice given as required in section 1, select the allotments which he and his family are lawfully entitled to take, the Commission to the Five Civilized Tribes shall proceed to locate all the improvements claimed by such citizen to have been rightfully held by him on April 21, 1904, and shall then designate allotments for such citizen and his family as may appear to their best interests, of which the Commission will advise the Delaware-Cherokee citizen, and also of his right to sell improvements on the surplus holdings.

7. In case of conflicting claims of ownership of improvements, or of the possessory right to lands,

the same shall be received and decided by the Commission to the Five Civilized Tribes as in ordinary contest cases, such cases to be made special; but, if any applicant applies for land or improvements which are shown by the records of the Commission to be claimed by a Delaware-Cherokee citizen, said citizen shall be at once notified of such application in order that he may promptly institute contest proceedings for the protection of his rights, and such contests shall be advanced upon the docket of the Commission for the earliest possible determination. The said designated official shall be promptly advised by the Commission of the filing of the application and also of the contest, if initiated, and of its final action upon such matters.

8. While the proceedings above outlined are pending, the Commission to the Five Civilized Tribes shall withhold from selection as allotments by other Cherokee citizens, all lands which have heretofore been claimed by Delaware-Cherokee citizens.

9. If the improvements upon the surplus holdings of any Delaware-Cherokee are not sold by him within a period of six months from the date of selection of his allotment, the land upon which such improvements are located shall thereupon be thrown open for allotment as other lands of the Cherokee Nation.

APPENDIX

5

DEPARTMENT OF THE INTERIOR,
Washington, D. C.

APPROVED, June 1, 1904.

THOS. RYAN,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
WASHINGTON.

RJH

I. T. D. 3072-1905.

March 27, 1905.

LRS

Commission to the Five Civilized Tribes,
Muskogee, I. T.

Gentlemen:

The Department is in receipt of your report dated March 20, 1905, in response to telegram dated March 16, same year, submitting such changes in the draft of regulations relative to the disposal of improvements of the Delaware-Cherokees, under the act of March 3, 1905 (Public 212), as in your judgment ought to be promulgated. You suggest that the regulations approved by the Department on June 1, 1904, be amended as follows:

“Section 4. Change the last clause thereof so as to read:

‘as provided in the Acts of April 21, 1904, and March 3, 1905.’

APPENDIX

Section 9. Change line 3 so as to read:

‘from March third, nineteen hundred and five, the land upon which.’”

The Department concurs in your recommendation, and said regulations are amended accordingly.

Action will be immediately taken requesting the President to designate the officer to make the valuation as provided in said act.

Respectfully,

E. A. HITCHCOCK,
Secretary.

Endorsed: Indexed. Commission to Five Tribes. No. 16472. Received Apr. 4, 1905. Answered. Book. Page. 23954-1905. Department, Hitchcock, Washington, D. C., March 27, 1905. Reports amendment in regulations relative to the disposal of improvements of Delaware Cherokees. Copy sent Cherokee Land Office April 5/05.

DEPARTMENT OF THE INTERIOR,

Office of

SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES.

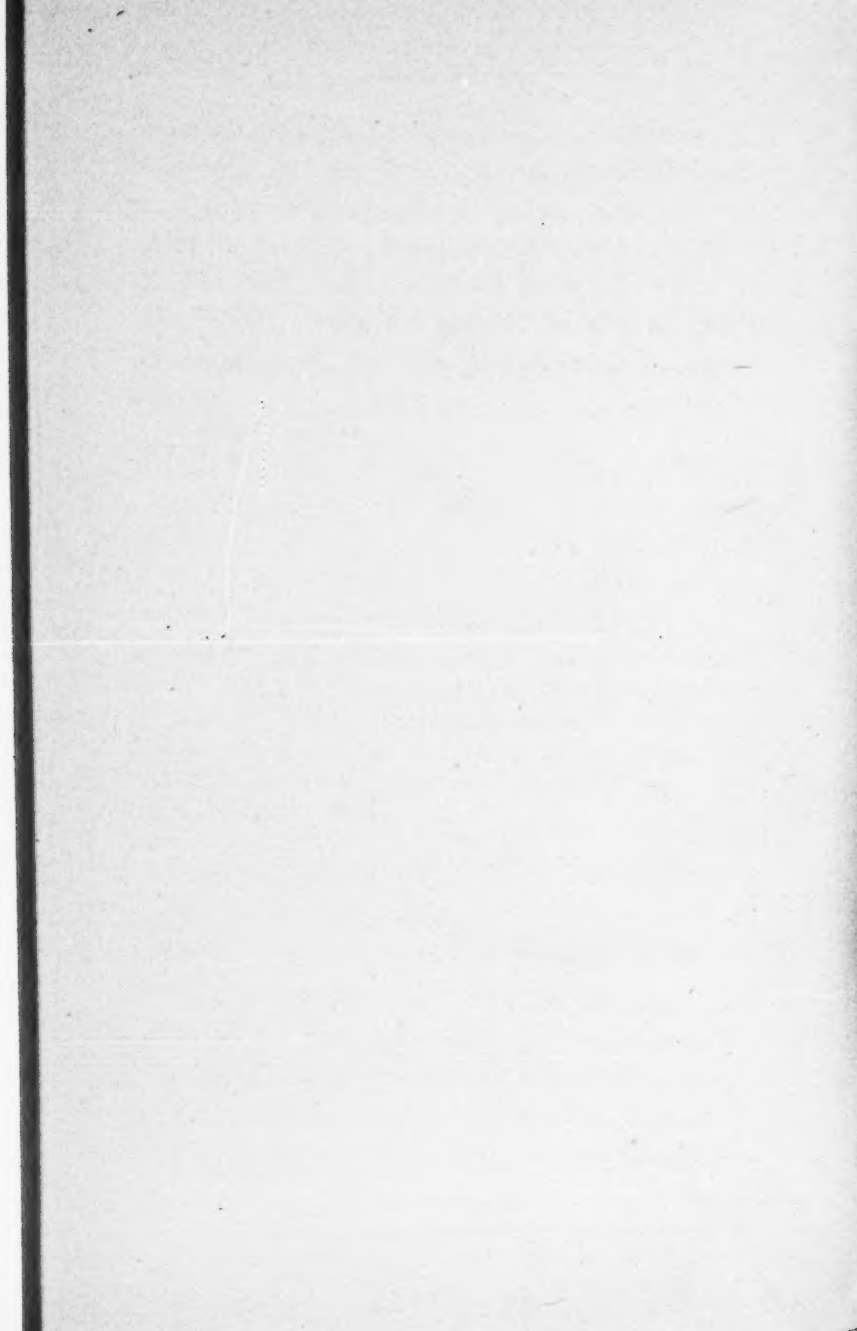
This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes, and that the above

and foregoing are true and correct copies of the regulations of the Department of the Interior, approved by Thos. Ryan, Acting Secretary of the Interior June 1, 1904, and amendments thereto of March 27, 1905, to carry into effect the provisions of the Acts of Congress of April 21, 1904 and March 3, 1905, governing the disposition of improvements of Delaware-Cherokees.

JOE H. STRAIN,

*Acting Superintendent for
the Five Civilized Tribes.*

Nov. 18, 1916. JRP



Supreme Court of the United States

OCTOBER TERM, 1914

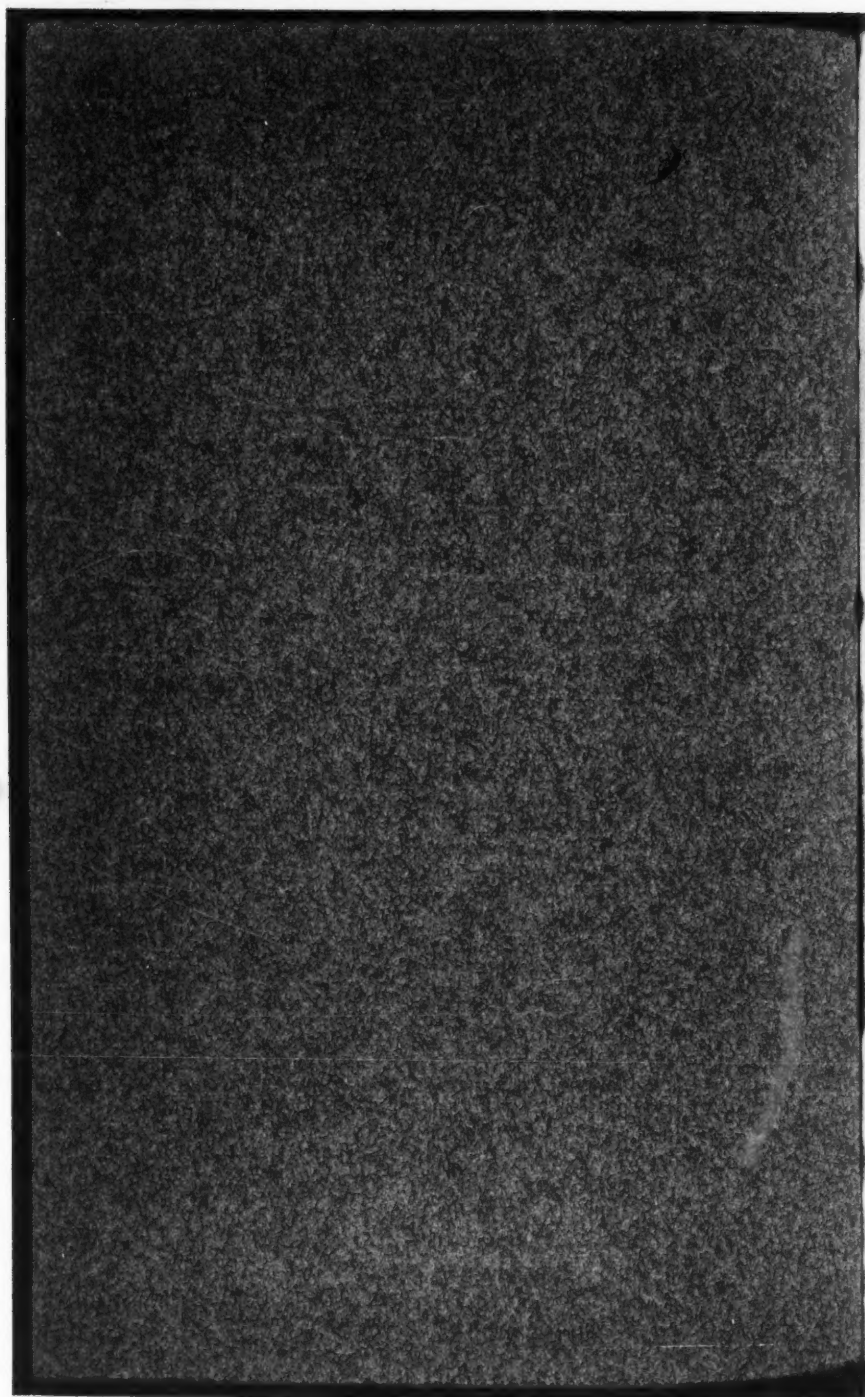
THOMAS J. BARNHART and DEBORAH HARRIS & HER HUSBAND
PLAINTIFFS

vs.
JOHN M. MARTIN and ROYCE ARNOLD & RALPH
BROTHERS OIL COMPANY
DEFENDANTS

In Error to the Supreme Court of the State of
Washington

BRIEF OF DEFENDANTS IN ERROR

HAZEL J. BOOKER
Attorney for Defendants in Error
John M. Martin and Royce Arnold &
Martin Brothers Oil Company



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plaintiff in error it is claimed that the court erred in holding and deciding that the plaintiff in error, Harnage, was not entitled to have trust declared in his favor in the land patented to the defendant in error Martin, by virtue of the records herein disclosing that said Harnage was owner of the improvements on said land and therefore entitled to select the same at allotment -----

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That because of the fact that the land in controversy was restricted by governmental restrictions at the time of the selection by Harnage and Martin, on May 13th and 26th, 1904, that the courts were without jurisdiction to try and determine the rights between the parties because of the fact that exclusive jurisdiction had been vested in the Secretary of the Interior by the Acts of Congress -----

17

Sections 14 and 15 of Cherokee Treaty, Stat. L. 716.----

18

THAT THE PLAINTIFF IN ERROR DID NOT COME INTO COURT WITH CLEAN HANDS AND THEREFORE IN NO POSITION TO ASK A COURT OF EQUITY TO GRANT THEM RELIEF.-----

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FINDINGS OF FACT BY THE DEPARTMENT OF THE INTERIOR -----

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13

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13

32 Stat. L. 716 -----

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In the

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 112.

JESSE L. HARNAGE and DELOKEE GAS & OIL COMPANY, - - - - Plaintiffs in Error

vs.

ANNIE M. MARTIN, and ROTH, ARGUE & MAIRE BROTHERS OIL COMPANY, - Defendants in Error

Brief of Defendants in Error.

STATEMENT OF THE CASE.

On the 27th day of December, 1910, the plaintiffs in error filed this action in the District Court for Washington County, Oklahoma, against the

defendants in error, praying principally that the defendant in error, Annie M. Martin, be decreed to hold the lands in the amended petition described in trust for the complainant Harnage and establish a resulting trust in said land in favor of the said Harnage against the defendant Annie M. Martin, and directing the said Annie M. Martin to convey all of her right, title and interest in and to said lands to the said Harnage, and in the event the said Annie M. Martin refused to do so, that a commission be appointed by the court for the purpose of making said conveyance, or that decree rendered therein declare said resulting trust stand as a conveyance of all right, title and interest of the said defendant in error, Annie M. Martin, to the said Harnage; the amended petition further prayed for an injunction and receiver (pages 3 to 626, Printed Transcript). To this amended petition the defendants in error filed separate demurrers (pages 626 to 628, Printed Transcript). The court overruled these demurrers on the 5th day of May, 1911 (page 628, Printed Transcript). The defendants filed separate answers to the amended petition (pages 629 to 659, both inclusive, of Printed Transcript), and to these answers replies were filed by the plaintiff (page 661 of the Printed Transcript). On the 26th day of October, 1911, the cause came on to be tried before the Honorable R. H. Hudson, the Judge of said court (page 662 of the Printed Transcript). At the close of plaintiff's

evidence the defendants filed their written demurrer which is set out in full at page 671 of the Printed Transcript; the grounds thereof are as follows, to-wit:

“First: That this court has no jurisdiction of the subject matter and parties under the evidence.

Second: That the evidence does not show that the decision of the Secretary of the Interior on questions of fact, awarding the lands in controversy to the defendant in error, Annie M. Martin, were induced by fraud or gross mistake.

Third: That the evidence does not show that upon the facts found, conceded and established without dispute at the final hearing before the Secretary of the Interior, that the Secretary fell into clear error in the construction of law applicable to the case which caused him to issue patent to the wrong party.”

That on the 28th day of February, 1912, the court rendered its decision and judgment in the case, sustaining the defendants' demurrer to the evidence and dismissed the cause. (Printed Record, page 672.) That the plaintiffs in error filed their motion for a new trial (Printed Record, page 673), and perfected appeal to the State Supreme Court (Printed Transcript, pages 674-675-676). That on the 28th day of October, 1913, the Supreme Court of Oklahoma, in an opinion by Chief Justice Hayes, affirmed the judgment of the lower court (Printed

Transcript, page 682). From said opinion and decision of the State Supreme Court a writ of error has been sued out to this court and the same now is for hearing before this court, on the motion of the defendants in error to dismiss for want of jurisdiction and upon the merits of said case.

ARGUMENT ON JURISDICTIONAL GROUNDS.

I have heretofore filed in this court and cause a brief on motion to dismiss or affirm this case, touching the jurisdictional grounds, and I shall not again reiterate what was said in that brief, but will attempt to reply to the briefs filed on behalf of the plaintiffs in error, both the brief on motion to dismiss and on the merits. I have filed with the clerk of this court certified copy of the mandate of the State Supreme Court, which has been filed in the District Court for Washington County, Oklahoma, in accordance with law, prior to the time of taking the appeal to this court and the mandate of the Supreme Court of Oklahoma, together with its file marks and endorsements, is printed in full in this brief in the appendix, and I contend that in view of the fact that the State Supreme Court had lost jurisdiction over this action, the same having been placed under the supervision and jurisdiction of the District Court, that in order to properly present the record to this court the writ of error

should run to the District Court for Washington County, Oklahoma, and as it did not run to such court, then that this court is without jurisdiction to hear and determine it, because the appeal is to reverse the judgment of the District Court.

Under the Second Proposition, that there is no Federal question involved, counsel seems to content himself by saying that in a test case between two Cherokee Indians that this court has often entertained jurisdiction of them and that therefore it would have jurisdiction in this case. Counsel has cited the case of *Ross v. Stewart*, 227 U. S. 530, 57 L. Ed. 626, and other cases supporting this theory. *Ross v. Stewart* is only applicable by analogy here, for the reason that this was a townsite contest, and while the same rule might be applicable, I am somewhat doubtful of it, but at all events, this case, it seems to me, rather more sustains the contention of the defendants in error than it does that of the plaintiffs in error. That the case, at all events, as I get it from the record in the report, was decided on the demurrer to the amended petition, which might raise a Federal question, but in the case at bar this was a demurrer to the evidence and raised the question of a *sufficiency of the evidence* to warrant the judgment for the plaintiffs in error. The lower court held that the evidence was insufficient and this ruling was followed by the Supreme Court of the State. The only question that the State Supreme Court examined was the ques-

tion of *sufficiency of the evidence*. It agreed with counsel on his proposition of law, that is, that the party owning the improvements was entitled to preference right of filing on the particular tract of land. Although I contend that the State Supreme Court had no jurisdiction to set aside the patent, unless they brought themselves clearly within this rule: First, that the evidence as set forth in the record shows that the decision of the Secretary of the Interior on the question of fact was induced by fraud or gross mistake, and, second, that the record of the evidence shows that upon the facts found, conceded and established without dispute at the final hearing before the Secretary of the Interior, that the Secretary fell into clear error in the construction of the law applicable to the case, which caused him to issue patent to the wrong party. Third, that the court had jurisdiction of the parties and subject matter of the action.

ARGUMENT ON MERITS.

First Proposition.

The plaintiff in error contends that the only circumstance which would uphold the validity of the claim of the defendant in error, Annie M. Martin, against the said Harnage for this land was the fact that at the time the lands were selected by Harnage, Annie M. Martin was the owner of the improvements on the tract. As a matter of law I dispute the principal contended for by counsel that had

Harnage made prior selection and had Annie M. Martin no right whatever to this land except her general right as a Cherokee citizen, still that the Department under the wide discretion allowed it, by Acts of Congress would have had the right to have allotted same to her in preference to Harnage or anyone else; in other words, it was a *discretionary act* which the Secretary of the Interior alone was the sole judge.

In what is commonly known as the Cherokee Agreement, the same being "An Act to Provide for the Allotment of the Lands of the Cherokee Nation, for the Disposition of Townsites Therein, and for Other Purposes" (32 St. L. 716), Bledsoe's Indian Land Laws, Section 510, reads as follows:

"Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes under the direction of the Secretary of the Interior to determine all matters relative to the appraisement and the allotment of lands."

Under this section there can be no doubt that where two parties attempt to select the same tract of a public domain, neither of them owning any of the improvements thereon, that the Commission to the Five Tribes, with the approval of the Secretary of the Interior, could allot the same to either one of said citizens without regard to whether one was prior in time to the other or not. In this case there is absolutely no evidence whatever of the

plaintiff in error owning any of the improvements as against the defendant in error, and only seeks to hold the same under the first proposition by virtue of his prior selection. In other words, if two citizens appeared at the Land Office, one on the first day of the month, and the other on the tenth, both asking the right to select a certain tract of land of which neither of them had any possession or improvements, under Section 22 of the treaty above quoted, the Commissioner to the Five Tribes, with the approval of the Secretary of the Interior, would have the right to allot the land to either of the parties, without regard to the one making the prior selection. And when I make this assertion, I am not unmindful of the fact that the Department, on some occasions, has awarded the land to the party making the prior selection, but I say that it is a matter of such absolute discretion vested in the commission of the Five Tribes, with the approval of the Secretary, that if he chooses to allot the lands to some other person, neither of whom own any improvements on it, that the mere fact that some citizen had already filed upon it would not have any effect with the right or the authority of the Commissioner to allot the same to the party who made the last selection. There is no question but what the selection made by Harnage was prior in point of time to the selection made by Annie Martin, but there is a question that Harnage did not make the first selection on this land in contro-

versy, because it was originally selected by Wallace Thursday on May 5, 1904, eight days prior to the time that Harnage made his selection, as is shown at page 336 of the Printed Record.

Owner of Improvements.

It will be noted from a careful analysis of the propositions announced by the plaintiffs in error that they make the test as to who was entitled to the tract of land at the time of the selection, to be the owner of the improvements on the tract, and therefore it will be necessary for us to determine from the law and the record in the case as to who was the owner of the improvements on the tract of land in controversy at the time of the selection. In order to determine this question it will be necessary for us to examine into the law to ascertain whether or not this court will weigh the evidence offered to the Secretary of the Interior and to the State Supreme Court, or whether the findings of the Secretary of the Interior on the questions of fact would be conclusive on the courts; and lastly whether or not the finding of fact by the State Supreme Court is subject to review here. This court in an early decision, and which is one of the leading cases—*Calhoun v. Violet*, 173 U. S. 60, 43 L. Ed. 615, states:

“It will not, in the absence of fraud, re-examine a question of pure fact, but will consider itself as bound by the facts as decided

by the Land Department in due course of regular proceedings had in the lawful administration of the public lands."

There is not one scintilla of evidence offered in this record of any fraud perpetrated by anyone on the Commission to the Five Tribes, or upon the Secretary of the Interior, that caused him to make the finding of facts herein. This being true we must then look alone to the facts as found by the Land Department on the question of whether or not Annie M. Martin was the owner of the improvements on the land in controversy. I respectfully call attention to the finding of fact made by the Department:

"* * * * That the contestant, through her grandmother, had been in possession of the land in contest since the year 1899. The contestee had never acquired any right to the improvements. * * * Nor has he ever been in possession and his right to be awarded the land in controversy arose solely upon his prior filing." (Record, page 602.)

On page 616 of the printed transcript the Department made the further finding of fact:

"The Department concludes that the contestant Annie M. Martin became a part of the Thursday family in early childhood and that she continued to be such until her marriage in 1898. Part of this time it is true her residence with the family was constructive only, but throughout the whole of that period she was

undoubtedly, in legal contemplation, a member of that family. * * * * But the claim of Annie M. Martin to share in the land held by the Thursday family did not rest alone on the fact that she resided on a portion of such land and made her home thereon. The payments due her as a member of the tribe and as heir of her father were actually made to Mary Thursday as head of the family. This is important, because it is evidential that the home of the latter was also the home of Annie M. Martin and for the further reason that it tends of itself to show that the said home was maintained and made possible by both. That Annie M. Martin had an interest in the Thursday holdings, considered as a whole, was apparent, not only from her own testimony, but also from that of others. * * * * The Department found, however, that after the northern portion and the southern portion were merged into one place, there was a recognized community of interests among the members of the family, growing out of their relationship and mingling of their funds, whereby each had an interest in every part of the family holdings. It follows, then, that when Sam Bob elected to take his allotment in the northern part of the place and Mary Thursday to take hers in the southern part, they impliedly relinquished to the contestants, that is, the remaining Indian members of the family, their interests to the tract lying between their allotments. * * * * As she was the principal owner of the improvements on the place it must be held that she remained in possession through the other members of the place who remained thereon. * * * * Her father undoubtedly had possessionary interest at his death, which passed by inheri-

tance to his child. * * * * But as to the claim of Mr. Harnage, the Department holds that prior application profits him nothing, for the contestant's interest in the land was of earlier origin. * * * * Her interest in the land is not only greater than that of the contestee, but also of prior origin. * * * On the other hand, the Department is thoroughly convinced that the contestee's claim is purely speculative and without merit * * * * that he has permitted himself to be a party to a series of transactions which were morally wrong."

As I have before stated, in view of the fact that fraud is not charged nor proved in this case, and the Secretary of the Interior having made the finding of fact, among others, that Annie M. Martin was the owner of the improvements upon the land in controversy, naturally the plaintiff in error's contention must fail, because under the rule announced in *Calhoun v. Violet*, the court will not re-examine the questions of fact. The proposition which I feel that is absolutely decisive of the case at bar is the question that the State Supreme Court, having found as a fact that the improvements upon the tract of land in controversy belonged to Annie M. Martin, one of the defendants in error, and that this court is bound by the findings of fact of the State Court on a writ of error from this court to the State Court.

This court has laid down the doctrine, "In a case coming from a State Court, we do not review

the questions of fact, but accept conclusions of the State tribunal as final.”

Cristman v. Miller, 197 U. S. 319, 49 L. Ed. 772.

King v. West Virginia, 216 U. S. 100, 54 L. Ed. 401.

By reference to the opinion of the State Supreme Court (page 688, Printed Transcript), it will be found that the following findings of fact were made:

“That a careful review of the evidence before the Secretary of the Interior, we are of the opinion that it is sufficient to establish that the defendant had such interest in the improvements upon the land in controversy as entitled her, under the provisions of the statutes above referred to, to select these lands as her allotment. Plaintiff does not claim that he ever acquired this right from her or that she ever conveyed it to others.”

If this case had been tried before statehood the appeal from the lower court would have gone to the Circuit Court of Appeals and from that court then to this one, and on an appeal of this character this court, under the first proposition herein announced, would not have had the right to review the evidence in this case except for fraud or gross mistake of facts; but since the case was tried after statehood and the appeal then went

to the State Supreme Court, then this court is absolutely bound by the findings of fact in the State Court, as you have already held. Counsel attempts in his brief to argue to this court the sufficiency of the evidence and a great portion of his brief is devoted to copying the evidence in the record. So firmly am I imbued with the idea that this court on an appeal of this character will not consider the sufficiency of the evidence, but will accept the conclusions of the State tribunal on the questions of fact involved, that I shall not attempt to reply to that part of the argument.

Under the second assignment of error raised by the plaintiffs in error, it is claimed that the court erred in holding and deciding that the plaintiff in error, Harnage, was not entitled to have a trust declared in his favor in the land patented to the defendant in error Martin, by virtue of the records herein disclosed, that said Harnage was the owner of the improvements on said land and therefore entitled to select the same in allotment. On the question of fact the same thing would apply in answer to this proposition as applies in the answer to the first proposition, that the finding of fact of the Secretary of the Interior was conclusive on the court in the absence of fraud; the Secretary of the Interior has found as a fact that the improvements on the tract of land in controversy belonged to Annie M. Martin. It is now contended by the plaintiff in error that the improvements on said tract

of land belonged to Wallace Thursday in his own right, as a Delaware Cherokee citizen, and also in his right as guardian of Mary Thursday, an insane person, and Sam Bob, a minor, all of whom claim to be Delaware Cherokee citizens; it is contended that because of the Secretary's error of law in not hearing the petition of the said Wallace Thursday in his own behalf and as guardian of Sam Bob, a minor, and Mary Thursday, his insane wife, that the Secretary made an error of law, and that if he had not made this error of law the improvements on said tract of land would have belonged to the said Harnage; under the regulations set forth in the appendix to Counsel's Brief it appears that at the time of selection of allotments by the Delaware Cherokee citizens, their testimony was to be taken as to what improvements thereon they were holding on April 21, 1904, in excess of the land which they and their families are entitled to take as their allotments, and if the Secretary of the Interior found as a fact in hearing the evidence in the Mary Thursday and Sam Bob case, at the time when their allotments were made; that the tract of land in controversy belonged to Annie M. Martin, I am at a loss to understand how the matter could have been changed by the Secretary of the Interior setting down for hearing a special petition filed by Wallace Thursday and Sam Bob, besides these petitions were withdrawn by Sam Bob after

he became of age and by Wallace Thursday as guardian of Mary Thursday, his insane wife.

Suppose for the sake of argument that the Secretary of the Interior had set down the petition of Sam Bob and Mary Thursday to sell the improvements on certain Delaware-Cherokee surplus lands and had found in the course of the hearing as a fact that the improvements were not owned by the petitioners, Sam Bob and Mary Thursday, but were owned by Annie M. Martin; clearly it would not then be contended that they would have any right to make a transfer or have anything to transfer. Then if that were true, suppose in other proceedings, the Secretary of the Interior found as a fact that the improvements upon a certain tract of land belonged to Annie M. Martin; if the improvements belonged to Annie M. Martin they certainly could not belong to Sam Bob and Mary Thursday, as the finding of one excludes the other; so, after all, this last question raised by counsel goes back to the original question and if the Secretary of the Interior and the courts have found as a fact that the improvements upon said tract of land were the property of Annie M. Martin at the time of the selection in controversy, this court in this action won't review those findings of fact.

These defendants announce that there are two questions outside of those heretofore argued in the reply to the plaintiff in error, that the defen-

dants in error believe are conclusive against the right of the plaintiff in error to recover in this action and these propositions are as follows:

(1) That because of the fact that the land in controversy was restricted by governmental restrictions at the time of the selection by Harnage and Martin herein on May 13th and May 26th, 1904, that the courts were without jurisdiction to try and determine the rights between the parties because of the fact that exclusive jurisdiction had been vested in the Secretary of the Interior by Acts of Congress.

(2) That the plaintiff in error, as appears from the allegations of their complaint and the evidence offered, did not come into court with clean hands, and therefore the bill did not contain any equity.

In the first proposition, while it is admitted that the patent to Annie M. Martin did not issue until the year 1909, still, when said patent did issue, it related back to the inception of the right, that is, the *date of filing*, and in order for Harnage to recover he must have been entitled to recover at that time, and therefore for the purpose of argument on this proposition the date of May 26, 1904, must be taken to be the date of inception of the title, and we now ask the court and counsel this question, whether or not the courts would have had the power and jurisdiction to hear and determine this question had the action been filed shortly after May 26, 1904, and if the court at that time would not have had jurisdiction; certainly the court did

not in 1910, six years later, when the action was filed.

Section 15 of the Cherokee Treaty, 32 St. L. 716, provides as follows:

“All lands allotted to members of said tribe, except such land as is set aside to each for homestead as herein provided, shall be alienable in five years after the issuance of patent.”

Section 14 of the same treaty provides as follows:

“Lands allotted to citizens shall not in any manner whatever, or at any time, be encumbered, taken or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs before the expiration of five years from the date of the ratification of this act.”

This selection was made, as I have stated, on May 26, 1904 (page 8 of the Printed Transcript). The patent to the land was issued and approved on April 13, 1909 (pages 654-655-656 of the Printed Transcript). Therefore, at the time selection was made the lands were under governmental restrictions. Annie M. Martin was a full-blood Cherokee descendant of the Delaware people, although upon the approved rolls she appears as a half-breed (page 613 of the Printed Transcript). The five-year period from the ratification of the Cherokee Treaty did not expire until August 8, 1907, there-

fore on that date was the first time that restrictions were removed from the surplus allotments of Cherokee Indians and long prior thereto the rights of Harnage, if any he had, had already accrued. Supposing for the sake of argument that the patent in this case had issued during the year 1906, and immediately after the issuance of patent Harnage had brought action to have Annie M. Martin declared to hold this tract of land in trust for his use and benefit; and suppose further that the court had made a decree finding in Harnage's favor and required Annie M. Martin to deed and convey the land to him, bearing in mind all the while that these lands were restricted until at least August 8, 1908. What would have been the effect of the court's decree requiring Annie M. Martin to convey to Harnage; that is, would Harnage have acquired a valid title to the tract of land, assuming that the proceeding as between Annie M. Martin and Harnage in the courts were ordinarily regular? It is clear to my mind that the decree would have been an absolute nullity because in violation of the treaty and the Acts of Congress. Then if the title would have been void because of governmental restrictions, is it not true that the court was absolutely without jurisdiction to make and enter any order in this case? As the action now stands, the sustaining of the demurrer to the evidence was in fact equivalent to a finding that the court did not have

jurisdiction and that was one of the grounds of the demurrer to the evidence.

The second proposition to which I care to call the attention of the court is *that the plaintiffs in error did not come into court with clean hands and therefore are in no position to ask a court of equity to grant them relief*. Attached to plaintiff's amended petition is an exhibit which is made part of his case, and this same exhibit is also offered in evidence, and in that exhibit I call the court's attention to the finding of fact made by the Secretary of the Interior in regard to the plaintiff in error Harnage's conduct before the Department in the matter of this allotment. The Secretary of the Interior found:

"The Department is thoroughly convinced that the contestee's claim (Harnage) is purely speculative and without merit; that he has at best but a naked paper title to the land unsupported by any right or equity, and that he has permitted himself to be a party to a series of transactions which were morally wrong." (Page 620, Printed Record.)

The plaintiffs are bound by the evidence which they offered and they have offered this record in evidence in which the Secretary of the Interior has made the finding of fact that the plaintiff in error Harnage had permitted himself to be a party to a series of transactions which were morally wrong.

"The most direct application of the maxim

is the uniform refusal of equity to assist one seeking its aid to enforce or to carry to fruition a contract or transaction in which he has been guilty of conduct wrongfully towards his adversary, so as to obtain the benefit of a fraud perpetrated upon him. Nor will equity assist one in obtaining the fruits of an act which is illegal, or even enable him to gain from an act which is unconscionable. One may be barred from relief by misconduct with reference to the suit itself." 16 Cyc. 144.

Creath v. Simms, 5 How. 193, 12 L. Ed. 110.

RESUME.

And now in conclusion, I respectfully submit to the Court that this case should be affirmed, because:

(1) This court is without jurisdiction to hear and determine the matter:

(a) The lands in controversy were under the exclusive control of the Secretary of the Interior at the time of selection.

(b) There is no Federal question involved. the State Supreme Court having decided the case purely on the question of the sufficiency of the evidence.

(2) For want of equity in the amended petition and evidence.

(a) For failure of the plaintiffs in error to come into court with clean hands.

(b) The facts found by the State Court, which are conclusive on this court, show that Annie M. Martin was the owner of the improvements upon the land in controversy and therefore under the Acts of Congress entitled to allot the same.

Respectfully submitted,

ROBT. J. BOONE,
Attorney for Defendants in Error,
Tulsa, Oklahoma.

W. L. McKENZIE,
of Counsel, Lima, Ohio.

APPENDIX.

STATE OF OKLAHOMA, }
SUPREME COURT. } MANDATE.

Jesse L. Harnage and Delokee Gas &
Oil Company, Plaintiffs in Error, }
vs. } No. 4284.
Annie M. Martin and Roth-Argue Maire
Brothers Oil Company, Defendants
in Error. }

To the Supreme Court of Oklahoma:

To the Honorable Judge of the District Court
of Washington County, in said State of Oklahoma.

Whereas, the Supreme Court of the State of
Oklahoma, did at the September, 1913, term hereof,
on the 28th day of October, 1913, make an order
in the above entitled cause, appealed from the Dis-
trict Court of Washington County, affirming the
judgment of the lower court in said cause,

Now, therefore, you are hereby commanded to
cause such execution to issue and further proceed-
ings to be had herein as shall accord with said
opinion and right and justice in the premises.

Witness, the Honorable Samuel W. Hayes, Chief
Justice of the Supreme Court of the State of Okla-
homa, at the City of Oklahoma, this 23rd day of
December, 1913.

W. H. L. CAMPBELL, *Clerk.*

[SEAL]

By JESSIE PARDOE, *Deputy.*

State of Oklahoma, Washington County.

I, T. H. REEVE, JR., Court Clerk in and for
the County and State aforesaid, do hereby certify
the above and foregoing to be a full, true and com-

plete copy of the Mandate, Case No. 1251, Jesse L. Harnage and Delokee Gas & Oil Co., Plaintiffs in Error, vs. Annie M. Martin, et al, Defendants in Error, as the same appears on file and of record in my office.

Witness my hand and seal this 18th day of September, 1916. T. H. REEVE, JR., Court Clerk.

By FALLIE QUAID.

ENDORSED:

Filed December 24, 1913, L. C. Pollock, Clerk,
District Court, Washington County, Oklahoma.



HARNAGE ET AL. v. MARTIN ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF
OKLAHOMA.

No. 112. Argued December 19, 1916.—Decided January 8, 1917.

Cf two qualified applicants for an allotment under § 11 of the Cherokee Agreement of 1902 (Act of July 1, 1902, c. 1375, 32 Stat. 716), the one owning the improvements on the tract in question, though junior in time of application, is entitled to prevail.

In such case a substantial equity in the improvements will suffice to hold the tract against a claimant whose interest in them is *nil*.

A decision of the Secretary of the Interior that one of two contesting claimants of an allotment under § 11 of the Cherokee Agreement, *supra*, was the owner of the improvements on the land, is conclusive, unless made without evidence to support it or otherwise the result of an error of law.

Where a community of interest in the possession and improvements of a tract of land existed among several members of a Cherokee family, an agreement among them that one should have a specific part of the land for her allotment, *held*, operative to pass an interest in the improvements on that parcel sufficient to give a preferential right to select it under § 11 of the Cherokee Agreement of 1902.

Section 18 of the Cherokee Agreement of 1902 recognized in terms the right of a tribal member to hold possession by his agent as well as by himself of land not exceeding the allottable quantity.

Certain proceedings before the Commissioner to the Five Civilized Tribes, and others in the United States Court for the Indian Territory, for the sale of the improvements upon the allotment here in

242 U. S.

Opinion of the Court.

question, *held*, ineffectual against one who was not a party to those proceedings and who made application for the allotment, based on ownership of the improvements, before they were instituted.
40 Oklahoma, 341, affirmed.

THE case is stated in the opinion.

Mr. James A. Veasey, with whom *Mr. Lloyd A. Rowland* and *Mr. Jere P. O'Meara* were on the briefs, for plaintiffs in error.

Mr. Robert J. Boone, with whom *Mr. W. L. McKenzie* was on the briefs, for defendants in error.

MR. JUSTICE PITNEY delivered the opinion of the court.

This was an equity action involving the right to an allotment of land in the Cherokee Nation, containing about 77 acres. The plaintiff in error Harnage, and the defendant in error Martin, are members of the Cherokee Tribe, and rival claimants to the allotment. The other parties are two oil companies that claim under Harnage and Martin respectively, and admittedly have no higher rights than theirs. Harnage brought an action in one of the district courts of Oklahoma for the purpose of charging the legal title to the lands in question, which stood in Mrs. Martin, with a trust in his favor, upon the ground that the Secretary of the Interior, through a gross misapprehension of the facts or an error of law, had awarded the land to her, when under the provisions of the Cherokee Agreement and other acts of Congress pertaining to the subject it should have been awarded to him.

By the Agreement (Act of July 1, 1902, c. 1375, 32 Stat. 716, 717) it was provided as follows:

"Sec. 11. There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee tribe, . . . land equal in value to one hundred and ten acres of the average allottable lands of

the Cherokee Nation, to conform as nearly as may be to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements.

* * * * *

"Sec. 18. It shall be unlawful after ninety days after the ratification of this Act by the Cherokees for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, more lands in value than that of one hundred and ten acres of average allottable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this Act shall be deemed guilty of a misdemeanor."

By §§ 74 and 75 (p. 727) the act was to take effect upon ratification by a majority of the legal voters of the Nation. It was thus ratified on August 7, 1902.

On May 13, 1904, Harnage made application to the Dawes Commission to have the land in controversy allotted to him, and his application was granted. Thirteen days later Mrs. Martin made a similar application, and this was refused on the ground of the prior allotment to Harnage; thereupon she instituted a contest before the Commission against the Harnage allotment. It came to trial before the Dawes Commissioner in September, 1907, and resulted in a decision in favor of Mrs. Martin. Harnage appealed to the Commissioner of Indian Affairs, who rendered a like decision, and this, on appeal to the Secretary of the Interior, was affirmed; and deeds for the land in contest were made to Mrs. Martin pursuant to the act.

Upon the trial of the equity case plaintiffs in error introduced a certified transcript of all proceedings and evidence in the contest proceeding, and this was the only

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evidence offered that was at all pertinent to the question we have to decide. Defendants in error demurred to the evidence, and the demurrer was sustained and the bill of complaint dismissed. This judgment was affirmed by the Supreme Court of Oklahoma. 40 Oklahoma, 341.

Harnage having admittedly filed first upon the land in controversy, Mrs. Martin was entitled to prevail in the contest only by showing that at the time of the Harnage filing she was the owner of the improvements, within the meaning of § 11 of the Agreement, and for that reason entitled under the provisions of the same section to take this particular land for her allotment. It was found by the Commissioner to the Five Civilized Tribes who heard the contest and by the Commissioner of Indian Affairs and the Secretary of the Interior who heard the successive appeals that Mrs. Martin was the owner of the improvements; and the only question for our determination is whether this decision was without evidence to support it or was otherwise the result of some error of law on the part of those officers. *Ross v. Stewart*, 227 U. S. 530, 535; *Ross v. Day*, 232 U. S. 110, 117; *Johnson v. Riddle*, 240 U. S. 467, 474.

Each of the departmental decisions was made in writing, but the findings are somewhat informal, each appeal having resulted in adding something to what had been found before,—a fact not surprising since the testimony is very voluminous, occupying more than 500 pages of the printed transcript in this court. The following is an outline of the facts found: Mrs. Martin was the granddaughter of an Indian woman known as Mary Anderson, or Anson, afterwards Mary Thursday, and was the daughter of William Bob Anson, otherwise known as Wild Bill. She had a brother known as Sam Bob. All these parties were Delaware Indians, adopted into the Cherokee Tribe, and as such were entitled to certain Delaware payments from the Government. During Mrs. Martin's childhood she and

her brother and their parents resided with the grandmother, who was the head of the family, upon an improved tract of land known as the "old home place," located south and west of the land in controversy. Wild Bill died in 1889, and his wife about the same time; and, after this, such payments as were due to Wild Bill as a Delaware were paid to Mary Thursday, and also certain small payments that were due to the contestant. About the year 1891 contestant, then a child of about ten years, was removed by force or undue influence to the home of a Delaware named Frenchman, and kept there until the Delaware payments of 1891 and 1893, averaging over \$500 each, were paid to the members of the tribe. The payments due to contestant were collected by Frenchman, who appropriated them to his own use, this having been his object in assuming control over the child. Later she was sent away to school at the expense of the Government, and afterwards returned to the vicinity of her home, where she supported herself by her labor. In November, 1898, when she was about eighteen years of age, she was married to George Martin, and shortly after this she and her husband visited Mary Thursday, and the latter then ascertained that contestant had not secured any land for future allotment. (This was after the establishment of the Dawes Commission, and after the passage of the Curtis Act of June 28, 1898 [c. 517, § 11, 30 Stat. 495-497] when the allotment of the Indian lands in the then Territory was in contemplation; *Woodward v. DeGraffenried*, 238 U. S. 284, 291.) During contestant's absence the original home place had been added to by the purchase in 1893 of the improvements on about 90 acres of land lying immediately north of it for \$800, the purchase price having been paid by Mary Thursday and Sam Bob from the proceeds of the Delaware payments, and the bill of sale for the improvements having been made to them. The entire place then comprised about 200 acres of improvements. Mrs.

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Thursday, recognizing an indebtedness to contestant on account of having received Delaware payments due to her and to her father, and there being sufficient land for herself and Sam Bob and contestant, gave to contestant a right to select the land in controversy, or at least to take as an allotment some portion of the home place, with the understanding that she, Mary Thursday, would hold it until the time for allotment, which was done. From the time of the making of this arrangement Mrs. Martin was recognized by her grandmother and her brother as having an interest in the place, that is, a right to share in the improvements to the extent necessary to entitle her to an allotment out of the land, notwithstanding her involuntary absence from home during her childhood. It was contended that Mary Thursday, at the time of the transaction referred to, was of unsound mind, but this was overruled as unsupported by the evidence.

It appears that before Mrs. Martin filed her allotment selection Mrs. Thursday had located her own allotment in the southern part of the home place, and Sam Bob had located his in the northern part, and the land lying between these was left for Mrs. Martin. This, in view of the previous agreement of Mrs. Thursday, was found to be equivalent to a transfer to Mrs. Martin of the specific improvements upon the intervening tract. The Department found that after the northern and southern portions of the farm were merged into one place there was a recognized community of interest among the members of the family growing out of their relationship and the commingling of their funds, whereby Mrs. Martin had an interest in every part of the family holdings, and that when Sam Bob elected to take his allotment in the northern part of the place and Mary Thursday to take hers in the southern part, they impliedly relinquished to the contestant as the remaining member of the family their interest in the tract of land lying between.

An agreement that Mrs. Martin should have a part of the Thursday place for her allotment might fairly be held to be equivalent to giving her a sufficient interest in the improvements to support a preferential right to the allotment, for by Cherokee law ownership of improvements entitled the owner to possession of the land; and in § 11 of the Curtis Act there was a proviso "that whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires." The same general policy was afterwards carried into § 11 of the Cherokee Agreement, with more particular recognition of ownership of the improvements as the decisive point.

The contention that the findings were unsupported by evidence cannot be sustained. The evidence is to some extent circumstantial, but it is sufficient. It was contradicted by Wallace Thursday, the husband of Mary, but his unreliability was clearly shown.

It is argued that under § 18 of the Agreement, Mrs. Thursday's possession, after November 5 of that year (90 days after date of ratification), of all lands in excess of the value of 110 acres of average allottable lands for herself and a like amount for each of her minor children, if any, was unlawful, and that because Mrs. Martin reached the age of twenty-one before the ratification of the Agreement Mrs. Thursday could not lawfully hold for her any part of the surplus lands. This is based upon a clear misinterpretation of § 18, the very terms of which permitted Mrs. Martin, as a member of the Cherokee Tribe, to hold possession, by herself or "through another," of lands not exceeding in value 110 acres of average allottable lands, and thus authorized her to hold the lands by her grandmother as her agent.

There is no question that the improvements upon the allotment in question, as well as upon the adjoining lands,

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were substantial in value, and were such as under the tribal law carried a right of occupancy, and such as were recognized in § 11 of the Curtis Act and § 11 of the Agreement. There is nothing inconsistent with the policy of the latter act in giving to Mrs. Martin, as owner of a substantial equitable interest in the improvements that were upon the tract in question when the act was passed, a preferential right to select that as her allotment. The policy was to give recognition to the established laws and customs of the Cherokees (Const. Art. I, § 2; Laws, 1892, §§ 706, 761, 762), under which citizens of the Nation might and did enclose and improve portions of their common domain and thereby establish a prior right to the possession of those lands, transferable to another citizen by a sale of the improvements. The Agreement substituted a system of allotments with ownership of the soil in the place of a mere possessory right, and its provisions were intended to limit the quantity of land that might be held by or for a single citizen, but they recognized the superior equity of an owner of improvements over that of a citizen who had no such ownership, and the precise character of the ownership was of little consequence as against a party having none at all.

Among the records that were introduced in evidence in the equity suit was an application made in the year 1905 to the Commissioner to the Five Civilized Tribes by Wallace Thursday, acting as guardian of the person and estate of Sam Bob, a minor, and of Mary Thursday, an insane person, for the sale of the improvements upon the allotment in controversy as surplus holdings of those Indians, and certain orders made in the same year by the United States Court for the Northern District of the Indian Territory upon the application of Wallace Thursday authorizing him in the same capacity to sell the improvements to Harnage. But as Mrs. Martin was not a party to these proceedings, and they were taken long after

the filing of her application for allotment, they can have no effect as against her.

Since we are convinced that the decision of the Supreme Court of Oklahoma deprived plaintiffs in error of no right to which they were entitled under the laws of the United States, it results that the judgment must be and it is

Affirmed.